

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JULY 9, 2002

+ + + + +

The Public Hearing convened in Room 220, South, 441
4th Street, N.W., Washington, D.C. 20001, pursuant to notice, at
9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID ZAIDAIN	Board Member (NCPC)
CURTIS ETHERLY, JR.	Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY
JOHN PARSONS
CAROL MITTEN

STAFF PRESENT:

SHERI M. PRUITT Secretary, BZA
BEVERLY BAILEY Office of Zoning

CORPORATION COUNSEL:

COREY BUFFO, ESQUIRE

I-N-D-E-X

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P-R-O-C-E-E-D-I-N-G-S

9:45 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I will call this hearing to order. This is the 9th of July, 2002, Public Hearing of the Board of Zoning Adjustments of the District of Columbia.

My name is Geoff Griffis, Chairperson today. Joining me I am hopeful will be Curtis Etherly. He is having some problems getting into the building, but will be here shortly.

Also, Mr. David Zaidain, representing National Capital Planning Commission, and Mr. Parsons our Zoning Commission Member today. Copies of today's hearing are available for you. They are located at the table close to the door where you entered into the hearing room.

I will run through a few things. For housekeeping, please be aware that these proceedings are being recorded. To that, there are several things. One, I would ask that there not be any disruptive noises or actions in the hearing room.

And secondly, when coming forward to speak to the Board, you will need to have a microphone on. You will need to tell me your name and your address before proceeding. Also, there are witness cards. Witness cards are available there at the table, entered into, and also at the table where you will give testimony.

1 Please fill out two of those cards and present them
2 to the Recorder, who is sitting to my right. Joining me today is
3 our able staff. Ms. Bailey, on my far right, Mr. Buffo,
4 Corporation Counsel, and Ms. Pruitt.

5 The order of procedure for special exceptions and
6 variances will be first. We will have statement and witnesses of
7 the Applicant. Second will be government reports, including
8 Office of Planning, and any other attendant reports to the
9 applications.

10 Third, will be the report of the Advisory
11 Neighborhood Commission. Fourth, would be parties or persons in
12 support. Fifth, would be parties or persons in opposition. And
13 finally, we will have closing remarks by the Applicant.

14 Cross examination of witnesses is permitted by the
15 Applicant or parties. The ANC within which the property is
16 automatically a party in the case. The record will be closed at
17 the conclusion of each case, except for any material specifically
18 requested by the Board.

19 And we will be very clear and specific as to what
20 and when that information should be submitted to the Office of
21 Zoning.

22 After the record is closed, by definition, no other
23 information will be accepted by the Board. The Sunshine Act
24 requires that the Public Hearing on each case be held in the open
25 before the public.

1 The Board may, however, consistent with its rules
2 of procedure and the Sunshine Act, enter Executive Session during
3 or after the Public Hearing on a case for purposes of reviewing
4 the record or deliberating on a case.

5 The decision of the Board in these contested cases
6 must be based exclusively on the public record. So, to avoid any
7 appearance to the contrary, the Board requests that persons
8 present not engage members of the Board in conversations.

9 I would also ask at this time that everyone turn
10 off cell phones, transmitting devices, beepers, and, so that we
11 don't have any disruptions in the proceedings.

12 The Board will now consider any preliminary matters
13 for the morning cases. Preliminary matters are those which
14 relate to whether a case will or should be heard today. Such as
15 requests for postponement, continuance or withdrawal, or whether
16 proper and adequate notice has been given.

17 If you are not prepared to go forward with a case
18 today, or if you believe the Board should not proceed, now is
19 almost the time to raise such a matter.

20 Let me first ask staff if there's any preliminary
21 matters on the cases this morning?

22 MS. BAILEY: Mr. Chairman, staff does not have any
23 preliminary matters.

24 CHAIRPERSON GRIFFIS: Very well. Does anyone in
25 the audience have preliminary matters on any of the applications

1 this morning? Not seeing a rush to the table, I think we can
2 call our first case.

3 MS. BAILEY: Application Number 16892 of Jemal's
4 Ford LLC, et al, pursuant to 11 DCMR 3103.2, for a variance from
5 the floor area ratio requirements under Section 771.

6 A variance from the Downtown Development District
7 parking and loading access restrictions under Subsection
8 1701.4(c), and a variance from the residential recreation space
9 requirement under Section 773.

10 And pursuant to 11 DCMR 3104.1 for special
11 exception from the roof structure provisions under Section 411,
12 that's 770.6, to allow the construction of a ten story mixed use.

13 That's office, residential, retail and arts uses.

14 The building is located in the DD/C-4 District at
15 premises 920-942 F Street, N.W., Square 377, Lots 35, 819, 820,
16 821, 852, 853, and a portion of a public alley to be closed.

17 All those persons wishing to testify, would you
18 please stand to take the oath. Raise your right hand? Do you
19 solemnly swear or affirm that the testimony you are about to give
20 in this proceeding will be the truth, the whole truth, and
21 nothing but the truth? Thank you.

22 (All persons were sworn.)

23 CHAIRPERSON GRIFFIS: Good morning.

24 MR. GLASGOW: Good morning, Mr. Chairman. We're
25 going to jump right into it.

1 CHAIRPERSON GRIFFIS: Thank you, sir.

2 MR. GLASGOW: Good morning, members of the Board.
3 For the record, my name is Norman M. Glasgow, Jr., with the law
4 firm of Holland and Knight, here representing the Applicant for a
5 proposed project located at the intersections of Tenth and F
6 Streets, N.W.

7 Here with me today are Mr. Douglas Jemal and Mr.
8 Paul Millstein of Douglas Development, the Developers of this
9 project. And Mr. Jemal is seated to my immediate right, Mr.
10 Millstein is behind me.

11 Next is Mr. Shalom Baranes of Shalom Baranes
12 Architects, who has previously been accepted as an expert witness
13 by this Board. Mr. Baranes is seated to my far right.

14 Also in the audience are Ms. Emily Eig of
15 Traceries, who has been accepted as an expert by this Board in
16 Historic Preservation matters. Mr. Lewis Bollan of Bollan, Smart
17 Associates, who is offered as an expert witness in Development
18 Feasibility and has been accepted as an expert by this Board and
19 The Zoning Commission in the past.

20 Mr. Bollan is seated in the audience. Mr. Osborne
21 George, Traffic Engineer, who has been accepted by this Board and
22 The Zoning Commission as a Traffic Engineering expert.

23 And Mr. Stephen Sher, Land Planner, who has also
24 been accepted as a Land Planning expert by this Board.

25 CHAIRPERSON GRIFFIS: Are you anticipating offering

1 them all as expert witnesses for this case?

2 MR. GLASGOW: Yes, sir.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. GLASGOW: All right. I would also like to
5 confirm the Board's receipt of the Statement of the Applicant in
6 this case?

7 CHAIRPERSON GRIFFIS: Yes, the Board has received
8 it.

9 MR. GLASGOW: All right, thank you.

10 CHAIRPERSON GRIFFIS: Not only that, we've read it.

11 MR. GLASGOW: Thank you. In proceeding with this
12 Application, the Applicant is requesting a variance from the
13 floor area ratio requirement, and at this point in time the FAR
14 of the building is approximately 8.2 FAR.

15 That is as a result of that between, well I'm going
16 to say approximately 8.2, because we're still addressing some
17 issues with the Historic Preservation Review Board with their
18 approval.

19 A variance from the Downtown Development District
20 parking and loading access restrictions. Although, as will be
21 testified by Steve Sher, technically we do not believe that we
22 need such relief, due to the plain language of the regulations.

23 It talks about that there's not to be access to
24 required parking and loading. We have no required parking or
25 loading in this project. A variance from the residential

1 recreation space requirements to permit all 300 square feet of
2 the residential recreation space to be interior space, either on
3 or off site.

4 And, as will be testified to by Mr. Jemal, he also
5 wants to have the flexibility for the 6,000 square feet of
6 residential space to be located off site if agreed to by Downtown
7 Housing Now Committee.

8 And a special exception for roof structure
9 provisions, under Section 411, to permit roof structures of
10 potentially unequal height and roof structures that do not meet
11 the setback requirements. And a dimension plan will be submitted
12 by Mr. Baranes on that.

13 At this time I would like to address, briefly, the
14 preliminary matter stated at Page 1 of Applicant's Pre-Hearing
15 Statement concerning the relocation of loading access, and then
16 give a brief opening statement.

17 CHAIRPERSON GRIFFIS: Good. And let me just
18 interrupt you before you get into that. I think, first of all,
19 the submissions are complete for what they are.

20 Clearly, that the, two things. This is decidedly a
21 very exciting project, there's no question about that. However,
22 there is quite a bit of information that is not specific in terms
23 of the level of detail that we're looking at.

24 So, my point is this. That we would like you to
25 run through. I think we will, and the Board, we've already

1 discussed, will be interruptive in your testimony in order to be
2 more precise and more expeditious in getting our questions
3 answered.

4 So that we don't need to go through the entire
5 presentation, I think, of what you're proposing. So, with that
6 understood, we may be interrupting with questions that I think
7 will be more pointed and get to us what we need in the direction
8 we need to go.

9 MR. GLASGOW: No, we understand, given the massing
10 type approvals that we've had with the details of fenestration to
11 be worked out with the Historic Preservation Review Board.

12 Certainly with respect to the parking access and
13 the loading access, the Applicant wishes to proceed with such
14 variances only if deemed necessary by the Board, given the plain
15 language of the regulations. And Mr. Sher will cover that in
16 more detail.

17 We desire to continue with the loading variance
18 request, and that came as a result of the testimony and
19 presentations before the Mayor's Agent yesterday, and a review of
20 the report that was submitted to the record by DDOT in this case,
21 dated July 1, 2002.

22 It became clear at the Hearing yesterday that from
23 a historic preservation standpoint, the Mayor's Agent was
24 particularly interested in not having loading off the alley. And
25 there were comments and letters received from others on the

1 Application indicating that the less traffic in the alley was
2 their preference.

3 CHAIRPERSON GRIFFIS: So, clarifying that point
4 then, as stated in your first page, you are removing, you are
5 withdrawing the request for that, but we're actually going to
6 entertain that. Is that correct?

7 MR. GLASGOW: Yes. We would like --

8 CHAIRPERSON GRIFFIS: Good, I would agree, I think
9 that's a positive direction to go.

10 MR. GLASGOW: And the Applicant will be submitting
11 plans that show that the loading, either off Tenth Street or the
12 alley, but believes the better course is to load off of Tenth
13 Street.

14 As was indicated by the Chairman, this Application
15 does involve a unique opportunity to proceed with a development
16 of an extremely significant site along the F Street corridor.
17 It's an intersection with Tenth Street, diagonally across the
18 street from Woodward & Lothrop Building and just north of Ford's
19 Theater.

20 As the Board may be aware, the site includes, as a
21 part of the property on it's east, the facades of The Atlantic
22 Building and three additional historic buildings which are
23 presently braced along F Street, and were part of a prior Mayor's
24 Agent project for which the demolition occurred and the new
25 construction did not commence.

1 The Applicant in this case has recently purchased
2 that site and is prepared to incorporate that project with the
3 corner project in an effort to proceed forward and revive that
4 stalled project.

5 This occurrence of events presents a wonderful
6 opportunity for the city and the neighborhood to have this
7 project proceed forward, with the eastern side of the site, which
8 comprises approximately 17,500 square feet, has sat fallow for
9 almost 15 years.

10 By combining the two sites, development is
11 feasible, whereas the eastern portion, as has been proved through
12 these many years of experience, is not feasible to develop on its
13 own, in the context of the Mayor's Agent Order, which was issued
14 in 1989.

15 Only the Developer before the Board today is able
16 to put forward that plan because that is, he is the owner of the,
17 essentially, additional 17,500 square feet which can be combined
18 with the eastern part of the site to allow this project to go
19 forward.

20 In order to implement the project, relief is
21 required from the Board for approval of the massing plan before
22 you today. This plan has received conceptual approval from the
23 Historic Preservation Review Board, and is supported by the
24 Advisory Neighborhood Commission, the Office of Planning, the
25 D.C. Department of Transportation.

1 The plan is also supported by the Downtown Cluster
2 of Congregations, the D.C. Heritage Coalition, and the Downtown
3 Housing Now Committee. If there are no preliminary questions,
4 I'd like to proceed with the first witness being Mr. Shalom
5 Baranes.

6 CHAIRPERSON GRIFFIS: Actually, I have one quick
7 question. Is anyone here to give testimony as a person, either
8 in support or opposition of this Application? Very well.

9 MR. ZAIDAIN: Mr. Chair, I have a question.

10 CHAIRPERSON GRIFFIS: Yes.

11 MR. ZAIDAIN: Just to make sure I'm clear, so
12 you're proceeding with having all the loading and parking coming
13 off of Tenth Street, and you're not proposing to use the alley
14 now?

15 MR. GLASGOW: We are proposing that that be
16 considered by the Board, yes, that the loading and parking be off
17 the alley. I mean the street, off of Tenth Street.

18 MR. ZAIDAIN: Off of Tenth Street, okay.

19 MR. GLASGOW: Yes, off Tenth Street.

20 MR. ZAIDAIN: And that would be in line with the
21 DDOT Report?

22 MR. GLASGOW: That is correct.

23 MR. ZAIDAIN: Indeed. Okay, but it's a change from
24 the original submission?

25 MR. GLASGOW: It's a change from the Statement of

1 Applicant.

2 MR. ZAIDAIN: Right.

3 MR. GLASGOW: The original submission was to have
4 both parking and loading off of Tenth Street.

5 MR. ZAIDAIN: Okay, okay. Thank you.

6 CHAIRPERSON GRIFFIS: Any other questions? Good.

7 MR. BARANES: My name is Shalom Baranes, with
8 Shalom Baranes Associates, Architect. I'd like to start just by
9 orienting you on the site with these two drawings here.

10 This is F Street running across, horizontally,
11 across this red line. And then, of course, this is Tenth Street.

12 And as you can see, our site occupies the corner here. The
13 original proposal that we submitted to the Mayor's Agent, which
14 was approved at that point in 1988, included just the right-hand
15 half of this yellow block, which is represented by these four
16 buildings here.

17 Basically that scheme involved saving these four
18 facades, and they currently are braced, with the buildings having
19 been demolished behind them, and constructing a new building up
20 to 110 feet behind those for office and retail use with parking
21 below grade.

22 This drawing that you see here indicates the extent
23 of the four facades that were, are being retained. With the new
24 ownership, the site has been extended to the west to now include
25 this additional portion of the property.

1 And in so doing, we also are incorporating these
2 three historic buildings, which are low buildings, three to four
3 stories, that occupy the corner. And I'll show those to you
4 shortly. But before I do that, let me just indicate here that
5 the only access to the alley, it's a 30 foot alley running in the
6 east/west direction here, is this spine off to the north.

7 This spine at the alley level, at the pavement
8 level, is 15 feet wide. And then as you go up, it narrows down
9 to approximately 12 feet, because this building here, across the
10 alley, which is shown in this photograph, has bays that extend
11 out over the property line.

12 Our major concern here, all a long, from the very
13 beginning, back in 1988, has always been getting access to both
14 parking and loading. And I will come back to that issue.

15 But what's important to note right now is that we
16 do have a condition here where we have two historic buildings on
17 both the east side and the west side of the alley. So we don't
18 have an option, as we normally do, of widening the throat as the
19 alley meets the street.

20 At one point with some of our early schemes, we
21 actually held the 15 feet here, but then as we came back to about
22 this point, we widened the alley by five feet. That scheme was
23 actually rejected by the Historic Preservation Review Board.
24 They felt it was very important for us to maintain the appearance
25 of this facade here, the side facade of this historic building

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1 continuing all the way down to the back intersection, as was
2 historically the case.

3 This building actually, originally, before we
4 demolished everything behind the facade, had a sidewall which
5 started at the property line here and extended all the way back
6 to the rear property line.

7 There's been enormous concern on the part of the
8 Preservation Review Board to maintain as much of the character of
9 the alley as possible, minimize the changes from what the
10 historic configuration was.

11 Even though at one time it did have access out to
12 the street in other directions, and those have all been closed
13 off, there's currently an interest in just not changing any of
14 the historic configuration of the alley.

15 And that's why the loading and the parking access
16 both have become such major issues. There are those who champion
17 the character of the alley, and there are others who place a
18 larger importance, a larger emphasis on what the conditions are
19 adjacent to Ford's Theater on Tenth Street right here. I'll come
20 back to that point shortly.

21 CHAIRPERSON GRIFFIS: On the alley, though, in the
22 submission there was discussion about actually the size of trucks
23 that could actually access that. Is it correct that the larger
24 trucks that might be servicing this building could not make it
25 back into the alley?

1 MR. BARANES: Well, we do have 15 feet here. And I
2 suspect given enough time and enough turns, most trucks could
3 make it back there.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. BARANES: The problem becomes this, that once a
6 truck gets engaged in that kind of an operation of trying to get
7 in there, it basically blocks up this whole area here and
8 prevents anybody from coming out.

9 CHAIRPERSON GRIFFIS: Indeed.

10 MR. BARANES: And that's one of the problems,
11 especially with mixing loading and parking is that anytime a
12 trash truck or any other kind of a truck is trying to make this
13 turn here in coming either out of the alley or into the alley,
14 everything is at a standstill.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. BARANES: And as you can see, all of these
17 buildings here, and to the extent that they rely on the alley,
18 that's the only access point.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. PARSONS: Mr. Baranes, I'm a little confused
21 here about what the Historic Preservation Review Board did to
22 you. You've got a drawing here that shows a widened alley at the
23 second and third floor, as I grasped it.

24 I'm trying to, I don't know what the number of the
25 drawing is. You're probably familiar with it, but it shows a

1 notch back, a widening of the alley by apparently five feet.

2 What is that about?

3 MR. ETHERLY: It's Drawing A-02.

4 CHAIRPERSON GRIFFIS: Is that the point where you
5 say it was actually rejected?

6 MR. BARANES: No, that drawing is correct. What
7 happened is that the, I'm sorry maybe I wasn't clear on it. The
8 Review Board, Preservation Review Board, rejected increasing the
9 width of the alley at the alley level.

10 However, they allowed us, once we got up above the
11 second floor, to set our building back five feet along here,
12 which helps us with the light and air for the upper floors, but
13 doesn't help us at all with the traffic.

14 MR. PARSONS: So historically, the building
15 extended all the way back to the --

16 MR. BARANES: Yes.

17 MR. PARSONS: -- cross alley?

18 MR. BARANES: That's correct.

19 MR. PARSONS: And are they imposing some facade
20 treatment as well on that alley that is unique in some way?

21 MR. BARANES: Well, yes. I mean what they are
22 requiring, basically, is that we design that facade so that it
23 has the appearance of being a side alley wall and not a new wall,
24 not a front wall, not a primary wall, but a secondary wall.

25 MR. PARSONS: So it won't have any fenestration,

1 just solid?

2 MR. BARANES: No, historically those did have some
3 fenestration. Let me give you an example of that. For example,
4 if you look at this building right here.

5 MR. PARSONS: Umm hmm.

6 MR. BARANES: You can see that this is treated as a
7 secondary party wall, although it does have fenestration in it.
8 And so there was an interest on the Review Board that we treat
9 both this wall, which will be a new wall, as well as this wall
10 here, which will also be a new wall, with the same character. As
11 a matter of fact, you probably can't see it from where you are,
12 but if you look at this right here, you see, there's the original
13 wall, and it did have windows it.

14 MR. PARSONS: So you're going to go up two stories
15 and then notch back, is that correct?

16 MR. BARANES: Yes.

17 MR. PARSONS: So how does the Review Board get, get
18 to that point? Saying, well that's, is it what it feels like to
19 somebody driving through the alley that it's a restricted alley
20 and once you get above that it doesn't make any difference?

21 CHAIRPERSON GRIFFIS: But you have 56 feet starting
22 back into the alley that will maintain that, the wall. So it
23 would be, I would imagine that they are looking at -- you can
24 correct me -- but they're probably looking, more concerned about
25 the view from the street as you look down the alley. Is that

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1 correct?

2 MR. BARANES: They are concerned about that, but
3 they also are concerned of the pedestrian experience walking down
4 the alley. So, in fact --

5 CHAIRPERSON GRIFFIS: Is there a lot of pedestrians
6 experiencing that alley walking down there?

7 MR. BARANES: Yes, yes. This is the alley through
8 which Booth, John Wilkes Booth escaped after assassinating
9 Lincoln.

10 CHAIRPERSON GRIFFIS: I see, so they're actually
11 tours that might go through there.

12 MR. BARANES: Yes, as a matter of fact, I mean,
13 Sally Blumenthal works for the Park Service, I'm sure she'll talk
14 about this later. But the, the .2 million annual visitors who
15 gather in front of Ford's Theater, some very large percentage of
16 those actually, some large percentage walks around the block to
17 get into that alley and look at the escape route.

18 CHAIRPERSON GRIFFIS: Indeed. Okay. Did that
19 answer your question also?

20 MR. BARANES: Well, let me just --

21 MR. PARSONS: I don't quite understand their point
22 of view, but let's move on.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. BARANES: One more try, Mr. Parsons, the --

25 MR. PARSONS: Not Mr. Baranes point of view, I'm

1 sorry.

2 CHAIRPERSON GRIFFIS: Right, Preservation.

3 (Laughter.)

4 MR. PARSONS: Yes, the other body.

5 MR. BARANES: I didn't want to speak for the Board

6 -

7 MR. PARSONS: Thank you, wise choice.

8 (Laughter.)

9 MR. BARANES: But we are maintaining this full
10 height back to a certain point in the alley. And then we're
11 setting back at the upper floors. So it's not a complete
12 historic re-creation of what was there, but it approximates it.

13 Okay. So here we have some photographs of the
14 current conditions. And I'll start here by pointing out that the
15 four facades are braced. The buildings behind them have been
16 demolished. I won't go into the history of all of that, except
17 just to say that, you know, we did receive a building permit to
18 proceed with that earlier project.

19 Construction started and then stopped. And the
20 facades have been standing there for quite some time now.

21 CHAIRPERSON GRIFFIS: And for clarification on that
22 point, a permit was received for that which would maintain, then,
23 the previous BZA Order, is that your position?

24 MR. GLASGOW: That's our position. I don't know
25 whether that's agreed to -- well, I don't know whether the

1 District completely agrees with that or not.

2 But that was with a prior Owner and Developer, not
3 this Developer.

4 CHAIRPERSON GRIFFIS: I understand, but, and I'm
5 sorry for the digression here, but it brings up an interesting
6 point that you're relying on the fact that that's still a
7 standing order based on the fact that a permit was pulled that
8 would maintain that order.

9 MR. GLASGOW: Yes, we are. But we also recognize
10 that the, that the 8.5 FAR project --

11 CHAIRPERSON GRIFFIS: Right.

12 MR. GLASGOW: -- that project is not a feasible
13 project to go forward. So we have come to the Historic
14 Preservation Review Board, the Mayor's Agent, and now to this
15 Board to try, and as will be testified to by Mr. Jemal, to put
16 together a project so that those facades are just not hanging out
17 there any longer.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. GLASGOW: And a project that makes sense and
20 can go forward.

21 CHAIRPERSON GRIFFIS: Okay. But are there issues
22 in the previous order that you're relying on that aren't
23 necessarily new relief applications today? For instance, there
24 was a mention of a rear yard requirement that was relieved in the
25 old -- is that not part of this property --

1 MR. GLASGOW: We don't need that now, the
2 regulations have changed since then.

3 CHAIRPERSON GRIFFIS: Indeed, okay, so that
4 clarifies. I'm sorry.

5 MR. BARANES: I just want to point out that one of
6 our concerns right now is just the condition of the rears of
7 those facades. And certainly we, you know, our Engineers have
8 designed a fairly stable structural system to keep those in
9 place.

10 However, the backs of these facades were not
11 designed to be exposed to the weather. They were interior faces
12 and as time goes on they are deteriorating and I think some major
13 action would be required here to arrest that deterioration.

14 Anyway, in expanding the site we picked up this
15 building that we refer to as the Lane Bryant Building. It's
16 mostly a parking garage right now. It's an L-shaped building
17 that wraps around these three historic buildings.

18 And you can see that it reappears right over here.
19 Our proposal today involves keeping these three historic
20 buildings in place. The only changes to them, other than the
21 general restoration that we'll undertake, will be some
22 additional, some new openings in the interior masonry walls so
23 that we can connect them.

24 But we're not going to be removing those walls and
25 we're not going to be removing the floors. There's a strong

1 interest here in keeping as much of the wood structure as
2 possible.

3 And those three buildings will be incorporated into
4 the larger project, into the floor plan of the office space. So
5 going around the corner here you can see the other facade of the
6 Lerner Building that we'll be demolishing, obviously not
7 contributing.

8 And then as we go further down the street here on
9 Tenth, here of course is Ford's Theater that we abut both here
10 and in the back on the alley. And of course, as you look down
11 the street here, you can see Ford's Theater, the Pepco Building,
12 and then of course the FBI Building.

13 The scale just keeps rising as you moving south.
14 Okay. Any questions on these existing conditions, at all? All
15 right. As you probably know, we've been involved over the last
16 few months in a fairly intensive review process with the
17 Preservation Review Board.

18 And what makes this project fairly unusual at this
19 point is that the design was changing, you know, up until last
20 Thursday, when we presented it to the Review Board. It actually
21 changed during the meeting.

22 And that's one of the reasons that we haven't been
23 very specific about some of these numbers that I know you're used
24 to seeing. But I'll try to describe the parameters that we've
25 agreed to, with the Review Board, in terms of the issues that

1 concern you. The Penthouse primarily and the overall massing.

2 So starting on F Street here, what we're looking at
3 is the four original -- when I say original facades I'm talking
4 about the original Mayor's Agent approval with the setbacks.

5 The concern here, with the Review Board, was that
6 there, was that any new proposal that we make basically conform
7 to the site lines and to the overall massing that was approved by
8 the Mayor's Agent back in 1988.

9 So this part of the project underwent many, many
10 changes over the last several months in order to accommodate that
11 concern. And what you're looking at here is a building that
12 looks a little bit lower than when it was originally approved by
13 the Review Board.

14 In fact, this is a, this is now a 120 foot
15 building, as opposed to a 110 foot building that was approved by
16 the Mayor's Agent. But we, we worked all of our setbacks. So
17 that the building, in fact, looks one story lower rather than one
18 story higher than what was approved by the Mayor's Agent.

19 And this is what the Review Board approved last
20 week. This is a, of course, a new facade here that will look
21 like a party wall as is the case right along here. And then
22 moving around the corner, here we have the three historic
23 buildings that I just addressed.

24 And this corner also underwent a whole series of
25 changes over the past couple of months. In order to basically

1 bring the scale down a bit, from what we had originally proposed,
2 and also to simplify the massing overall.

3 And you can see it also in this board right here.
4 And in reworking all of this we wound up having to make several
5 changes to the penthouse. And I will come back to that and
6 address it a little bit more in detail shortly.

7 One of the areas that has remained open, continues
8 to remain open with regard to Preservation Review Board Approval,
9 is the height of this portion of our project, right on Tenth
10 Street. We have had a strong impulse to make this as tall as
11 possible, for many reasons.

12 One of which is it alludes very nicely back to the
13 Atlantic Building and the condition that you see with the
14 Atlantic Building in relating to the lower buildings here. It
15 seems to me, to us, that this was an appropriate and interesting
16 condition to repeat around the corner.

17 Of course we run into a little stumbling block here
18 with the Ford's Theater. Many people had the view that it was
19 very important to maintain a very low cornice line along here.
20 The staff report did support us, the staff report with the
21 Preservation Review Board, and the did support us in terms of
22 making this taller rather than lower.

23 And the way we've left it with the Review Board is
24 that we will go back to them with facade designs, detailed facade
25 designs for anything ranging from five stories up to nine

1 stories. And whatever they approve, we'll incorporate into our
2 project. So we will design this both at five and at nine and
3 perhaps something in between.

4 I don't know, we'll study it. And that is where we
5 are seeking some flexibility in your approval, in terms of the
6 height of that.

7 MR. PARSONS: So if you lose that square footage
8 from the Review Board, you're not looking to bulk it up somewhere
9 else?

10 MR. BARANES: That's correct.

11 MR. PARSONS: It will just be a loss to the
12 project?

13 MR. BARANES: That's correct. The Review Board
14 made that very clear that if we lost that square footage, we
15 would not be allowed to make it up elsewhere. And that's why
16 there's a range in the FAR that we're seeking. Which is going to
17 wind up being somewhere, I think, between 8.03 and maybe 8.2, if
18 we're lucky.

19 CHAIRPERSON GRIFFIS: I may have heard you
20 incorrectly, but you indicated the height variance. But it was
21 clearly FAR, which is what Mr. Parsons is saying?

22 MR. BARANES: That's correct.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. BARANES: It's not a variance --

25 CHAIRPERSON GRIFFIS: It's not a height issue for

1 us?

2 MR. BARANES: That's right. That's right. We're
3 just looking for flexibility in the design, within the allowable
4 height limits.

5 MR. ZAIDAIN: But aside from that issue, I think in
6 your submittal and then I think from Mr. Glasgow's statement
7 earlier, there was some confusion. I've heard 110 feet and then
8 there's 120. What is the ultimate height, aside from these
9 issues in terms massing around the facades, but what is the
10 ultimate height of the building?

11 MR. BARANES: One hundred and twenty feet.

12 MR. ZAIDAIN: One hundred and twenty feet, okay.

13 MR. BARANES: Plus the penthouse.

14 MR. ZAIDAIN: Plus the penthouse, right.

15 MR. BARANES: There's also concern with the massing
16 as it turns the corner here and as it's viewed from the south end
17 of Tenth Street looking over Ford's Theater. And I just
18 yesterday realized that we left out, there are two cupolas here
19 on top of Ford's Theater, two light monitors.

20 Which are quite large and would actually block a
21 portion of the view of the penthouse. Which, I hate to admit,
22 but we forgot to put those into the computer model. You see them
23 right here. We've probably got another three stories on the
24 building if had shown this.

25 (Laughter.)

1 MR. BARANES: But, anyway, I think we've reached
2 resolution on that. The Review Board and staff was satisfied
3 that the configuration we show here works. The only stipulation
4 being again, if you look at the staff report as it was approved,
5 is that the Review Board does want to see some variety in the
6 height of the penthouse.

7 So they want to see some variation in the
8 different, in the roof elevations. So that will require, I think
9 it's a special exception, right? Not a variance? A special
10 exception from you.

11 The penthouse is shown, both in the model and our
12 drawings right now, as 15 feet, six inches tall. And so that's
13 well below the 18/6 that's allowable under the zoning. And so
14 this will be an area of, you know, of further exploration and
15 discussion.

16 We'll definitely be under the 18/6. Portions of
17 our penthouse will be well below the 15/6, and other portions may
18 wind up being a little bit taller than 15/6. And again, we won't
19 know until we go through the review process with HPRB.

20 CHAIRPERSON GRIFFIS: Are they also concerned with
21 the materials of the penthouse and how it integrates in the
22 building? Was that any discussion?

23 MR. BARANES: No. It was not part of the
24 discussion, but they will be very concerned about that. So as we
25 develop the project further we'll be addressing that.

1 CHAIRPERSON GRIFFIS: As part, specifically in our
2 zoning regs, in terms of 411, this Board does have the discretion
3 of looking at materials and design and placement for special
4 exception. So, and it has in the past been very, an important
5 issue for the Board.

6 Of course I'd hate to get in competition with the
7 Preservation Board on that, but anyway, I think attention to it
8 would be, I don't need to tell you, will be very important.

9 MR. BARANES: No, I agree. I mean, I think you can
10 be rest assured that we're not going to cheapen the materials up
11 there. We're not going to do it on a metal corrugated system or
12 anything like that.

13 CHAIRPERSON GRIFFIS: Good.

14 MR. BARANES: It will have the same level of
15 material that will be incorporated to the rest of the primary
16 facades. Okay. So, let me just walk you through the plans a
17 little bit here.

18 And actually I'll do it a little bit different than
19 I intended. I think I'll start at the top of the building and
20 work our way down. This way we can wind up talking about the
21 loading.

22 CHAIRPERSON GRIFFIS: Yeah, I think particular
23 attention just can be paid to, first of all, if there's any other
24 discussions on the floor plans for the FAR, also the loading.
25 Other than that, as I stated, the Board has had ample time to go

1 through the plans and they're very clear in terms of what they're
2 representing. So, I don't think a lot of additional time or
3 description is required.

4 MR. BARANES: Okay. I did just want to make one or
5 two points about the floor plans.

6 CHAIRPERSON GRIFFIS: Please.

7 MR. BARANES: This is the tenth floor plan. I mean
8 I hope you'll agree with me it's a very unusual office place.

9 CHAIRPERSON GRIFFIS: It kind of looks like a
10 modern Texas design.

11 MR. BARANES: Yeah, yeah. Yeah, because of all
12 these setbacks, you have here and here and here, you know, we
13 wound up with a floor plan that just, whew, it works, arguably.
14 But you can see that, I mean, two critical things to us are that
15 we wind up with a core, and we are going to look at shifting this
16 core now that we know where all our setbacks are.

17 But it doesn't matter how you shift it, you can,
18 it's very difficult to get offices and a corridor both on that
19 side and on that side. So part of the exterior skin here is
20 going to be devoted to circulation. Which is, it's a big loss to
21 the project.

22 And the other thing is that the, you look at where
23 the propensity of space is up here, and it's on the alleys, it's
24 not where you want it to be, up in the corners, you know, facing
25 the public streets. And that is going to be, you know, a

1 detriment to the leasing of the project.

2 It's something we'll have to deal with, but it's
3 something we've agreed to live with. Again, here you see the
4 penthouse. And you can see the complicated nature, with all
5 these lines here, of the different roof levels that we have as we
6 step down the building.

7 There really is no such thing as a typical floor in
8 this building, every floor is different as you step down. And on
9 the penthouse, again, on the alley-side here, of course, we are
10 going to be right up against the property line here. So there
11 will be no setbacks along here.

12 Facing Ford's Theater here we have a very small
13 setback. It's going to be, you know, somewhere between two and
14 four feet. So that will require some relief. This corner here
15 will require some relief because, again, it has no setback from
16 the parapet of the roof below.

17 And this corner here will not be in total
18 conformance either, because it's not going to be setback exactly
19 at a one-to-one ratio. Here, where setback is significantly more
20 than one-to-one, as we are here. And I think that on these two
21 sides we're going to be okay.

22 So I don't know how you're going to word your
23 approval here, but we are going to require some flexibility on
24 developing both the height and the perimeter as it relates to the
25 parapets below.

1 CHAIRPERSON GRIFFIS: Not getting into the approval
2 yet, how, where is, where do you think the issues are that will
3 develop changes within the penthouse? I mean when you talk about
4 flexibility, how much are you actually looking at? I mean I can
5 understand that perhaps the perimeter walls of the penthouse may
6 be shifting a little bit within, what, six inches, eight inches?
7 Or are you anticipating that there may be an entire re-design?

8 MR. BARANES: No, there will not be an entire re-
9 design. I think what will happen is that some of the exterior
10 walls may shift a couple of feet, a few feet. And that will also
11 be a function of how tall they wind up being.

12 Again, keeping in mind that they will always be
13 below the allowable 18/6.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. BARANES: So we're not looking for a height
16 variance with regard to the 18/6, we're looking for a height
17 variance with regard to the consistency.

18 CHAIRPERSON GRIFFIS: Indeed. Indeed. And from
19 that diagram I think it's fairly clear that, although from the
20 perimeter wall the setback isn't there, clearly from F and Tenth
21 Street the setback is, is substantial. Is that correct?

22 MR. BARANES: That's correct.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. BARANES: This would have met all the old
25 setback regulations for penthouses before they changed a few

1 years ago. Okay. And then why don't we go down to the floors
2 below now and I'll focus on the loading and the parking.

3 And I will go ahead and just show you, let's see,
4 I'll start with this scheme here. We have F Street at the top,
5 Tenth Street on the left here. This is Ford's Theater here, at
6 the bottom of the sheet.

7 And this was the scheme we had presented earlier
8 on, where we had both the parking access off of Tenth Street and
9 then adjacent to it, access for the loading. And then adjacent
10 to the loading, we had a pedestrian walkway which we were going
11 to share with Ford's Theater to allow visitors to come through
12 here and back into the alley without having to walk all the way
13 around the block and dodge that traffic.

14 And there was also some discussion about possibly
15 sharing the loading here with Ford's Theater. Because their
16 loading is right here now. And they have a fairly complicated
17 loading arrangement where they off load from one truck to another
18 truck to a smaller truck and then they go around the alley and
19 unload there.

20 But anyway, also the exact location of our core is
21 going to be somewhat dependent on how we work out this
22 configuration of the loading and the parking, because of the way
23 the elevators have to come through that and dodge all of these
24 ramps.

25 The office lobby will be located off of that street

1 right here. This will all be retail here. These are all the
2 retained facades, historic facades. We do have a Preservation
3 Zone, which goes back some distance into the building on every
4 floor.

5 So as we reconstruct the new building, we
6 reconstruct the new building behind these facades, for about the
7 depth of one room behind the windows, we will be reusing some of
8 the historic fabric that we removed before we demolished the
9 building.

10 And then we do have another scheme that shows the
11 loading occurring off of the alley here. So this would involve
12 coming in through here. Trucks making this turn here, coming
13 into here and then backing up into here.

14 And you can see that it really uses up the whole
15 alley here just to make this turn. And in this scenario the
16 loading would be here and the parking would continue right off of
17 Tenth Street.

18 Okay, then there's the issue of the residential --

19 MR. PARSONS: Well, I'm --

20 MR. BARANES: Yes.

21 MR. PARSONS: I'm a little confused here. I
22 understood in Mr. Glasgow's opening remarks that we're dealing
23 with the diagram on the right.

24 MR. BARANES: That's correct.

25 MR. PARSONS: Are we looking at two options here

1 today or not?

2 MR. BARANES: I was just really going over the
3 history more than anything else.

4 MR. PARSONS: Oh. So what is the proposal this
5 morning?

6 MR. BARANES: This one right here.

7 MR. PARSONS: This one being --

8 CHAIRPERSON GRIFFIS: Loading and parking --

9 MR. PARSONS: -- A-2 again.

10 CHAIRPERSON GRIFFIS: And that, you sounded like it
11 was undecided whether you'd have that pedestrian walkway that
12 would accommodate the Ford's into the alley?

13 MR. BARANES: I think Mr. Jemal is going to address
14 that.

15 CHAIRPERSON GRIFFIS: Okay. It seems to me you'd
16 want to bring your people around by the retail space and down the
17 alley. But nonetheless.

18 MR. BARANES: And even through the retail space.

19 CHAIRPERSON GRIFFIS: Indeed.

20 MR. BARANES: Okay, there's the question of the
21 recreational space for the residential.

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. BARANES: And we are requesting that perhaps it
24 might be placed off site. Now if we do incorporate that 6,000
25 feet of residential on this site, again, we've not studied

1 exactly how we would access it.

2 What part of the building it would be in. But it
3 would be very difficult, it would be on the lower floors, the
4 residential. And what we're looking for here is relief on the
5 recreational space associated with that because we're actually
6 occupying 100 percent of the site.

7 And it would be very tough to get the residents
8 through the office building, up to some upper terrace, adjacent
9 to an office space and not to provide recreational expense.

10 CHAIRPERSON GRIFFIS: The issue comes, if you're
11 going to, is the requirement for outdoor recreation space.

12 MR. BARANES: That's right.

13 CHAIRPERSON GRIFFIS: I see.

14 MR. BARANES: Yeah. And also with the, you know,
15 we're trying to control the height of the penthouse and keep it
16 below 18/6, you know, the highest we go is 16/5 here. And with
17 that height there's really no way to get an elevator up to the
18 roof and comply with ADA.

19 So we couldn't figure out how to provide
20 residential recreation space. We just couldn't figure it out.
21 So that's why we're asking for relief on that.

22 MR. GLASGOW: And Mr. Baranes, with the complicated
23 roof scheme, there, it's my understanding there are no areas in
24 that roof that meet the dimensional requirements for the
25 residential recreation space, is that correct?

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1 MR. BARANES: That's right. There's a minimum
2 requirement, I think, for a dimension of 25 feet in any
3 direction. Is that right, it's 25? And with all the equipment
4 and all the setbacks we have up there, we don't have any space
5 like that.

6 CHAIRPERSON GRIFFIS: But you could accommodate 300
7 square feet, which I think is what was the square footage
8 requirement for the 6,000 residential.

9 MR. BARANES: On the interior?

10 CHAIRPERSON GRIFFIS: No, on one of the roof
11 terraces, let's call it, on the different --

12 MR. BARANES: Well, we could but it would be
13 placing it right outside this window here, where you have office
14 space here and then you have somebody, one of the residents is
15 just outside your window. That wouldn't be appropriate to do.

16 CHAIRPERSON GRIFFIS: Unless you have the
17 residential floor that actually accessed out onto one of the
18 terraces.

19 MR. BARANES: Well, the residential, the residences
20 are going to have to be located on the lower floors of the
21 building.

22 CHAIRPERSON GRIFFIS: I see. And why would that
23 be?

24 MR. BARANES: Otherwise you're taking up two cores
25 --

1 CHAIRPERSON GRIFFIS: Indeed.

2 MR. BARANES: -- all the way up through the
3 building for just 6,000 feet of residential.

4 CHAIRPERSON GRIFFIS: Indeed. So your point is if
5 you put it on the sixth floor out of ten stories, you would have
6 commercial below. You have to access the residential in that
7 little layer of the cake and then commercial above, so it would
8 be redundant in all the core and the systems that might be
9 different.

10 MR. BARANES: Right, right.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. BARANES: I think that concludes my testimony
13 and I don't know whether I should answer questions now or be
14 available for later.

15 CHAIRPERSON GRIFFIS: Why don't you take questions
16 now while it's fresh from the Board, any other clarifications,
17 different directions.

18 MR. PARSONS: Did you study a configuration where
19 all of the parking and loading would come off the alley system?
20 Or, you've only considered these two schemes here?

21 MR. BARANES: We only considered, we never
22 considered taking the parking off the alley, as well as the
23 loading. Primarily because once you put a loading dock there it
24 really blocks access to the alley for the cars.

25 Anytime there is any truck moving through there.

1 And it would be so detrimental to the leasing of the office
2 building, that we didn't think that that was a, our client didn't
3 think it was a very good marketable solution.

4 MR. PARSONS: All right, thank you.

5 CHAIRPERSON GRIFFIS: On the submission, your sheet
6 A-01, there is a note that indicates that it is on Tenth Street,
7 a relocated curb cut for a garage and loading access. Is that
8 correct? Or it's a modification of an existing curb cut that's
9 there?

10 MR. BARANES: The latter is correct, it's a
11 modification.

12 CHAIRPERSON GRIFFIS: Okay. And it's indicated by
13 the dashed lines which would have been the original?

14 MR. BARANES: I believe so, yes.

15 CHAIRPERSON GRIFFIS: Okay. So if I read that
16 correctly, it's essentially just widening that access?

17 MR. BARANES: There are a couple of ways we could
18 do it. We could either widen it slightly or we could make it two
19 separate but smaller curb cuts. One of the loading, one for the
20 parking. And that's just something we need to study a little bit
21 further and work on with DOT.

22 CHAIRPERSON GRIFFIS: Okay. It's, going back to
23 the alley, I must say I've never taken a tour of Ford's and gone
24 through that alley, but maybe I should. Nonetheless, is there
25 lighting there? I mean is it appropriate for pedestrian traffic

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1 coming down that alley?

2 MR. BARANES: There's a lot of new development
3 occurring on this block. And just about all of it is going
4 through the Preservation Review Board. And the Board --

5 CHAIRPERSON GRIFFIS: And most through BZA too.

6 MR. BARANES: And BZA also, okay. But the Board
7 has been attaching a lot of conditions to all the approvals,
8 requiring that special attention be paid to all of these rear
9 facades as the projects are redeveloped.

10 And Mr. Jemal has offered to repave a portion of
11 the alley with special pavers that will work well for
12 pedestrians, to put in special lighting, and basic to create a
13 friendly pedestrian environment back there.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. BARANES: The Review Board has also been
16 encouraging a lot of the Applicants to put and place entrances to
17 public uses in each one of the project in the rear there. So it
18 might be, we may wind up with entrances to some retail.

19 We may wind up with some entrances to some artist's
20 lofts back there. But basically there's just been a real
21 emphasis on activating that alley.

22 CHAIRPERSON GRIFFIS: Okay. And new paving and all
23 that, that sound tremendous. Are you familiar with any of the
24 light fixtures that are being proposed? Are they lamp posts, I
25 mean are the poles on the alley?

1 Are they more of a sponce applied to the -- my
2 point only is you've got a 15 foot alley. You start putting
3 lighting back there, you're obviously eating into the space. Not
4 to mention, I would anticipate there would be some sort of, as
5 you've indicated, paving that would, that would announce the fact
6 that there's a pedestrian area to walk, so as cars go by.

7 Has it come to that level of development or design?

8 MR. BARANES: We've offered to design that and take
9 it through HPRB.

10 CHAIRPERSON GRIFFIS: I see.

11 MR. BARANES: So these issues have been discussed,
12 but there's no approved design yet.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. PARSONS: So, as I'm beginning to grasp this,
15 the Historic Preservation Review Board, in their wisdom, have
16 decided that this alley should not be for vehicles, that this
17 alley, designed for the purpose of getting access to the rear of
18 these building, will be a pedestrian environment with retail and
19 a festive place, I guess.

20 So what that does to this Board is said, well, I
21 guess we're not going to use the alley for the intended purpose,
22 so let's go out on the street with our loading and access to the
23 parking. Is that what's happening here?

24 MR. BARANES: Well, no, I don't think so. They're
25 trying to walk the middle ground. They're trying to reduce the

1 intensity of vehicular use of that alley. So that it will be
2 somewhat friendly to pedestrians. They are not trying, I don't
3 think they are taking a position that no vehicles should be
4 allowed there.

5 They are trying to encourage, first of all, I
6 think, operational management in terms of hours for the use of
7 that alley for loading and unloading. And they are trying,
8 they're basically just trying to minimize the number of vehicles
9 in that alley. Realizing that some of the these buildings, and
10 for example, this building, let's see, there's a large new
11 building along here that was built, you know, sometime, maybe ten
12 years ago, approximately, that depends on the access from that
13 alley.

14 MR. PARSONS: Is that the only one on the alley
15 system that, other than Ford's Theater?

16 MR. BARANES: No, the hotel here, I think, has an
17 entrance on the corner, on the back corner also. I don't know
18 how they split their loading between front and rear, but I do
19 know that they have access here.

20 MR. PARSONS: But for the historic, I'll call it
21 the historic Booth alley, which is the alley system that you're
22 dealing with today, they're discouraging any vehicular use.

23 MR. BARANES: They're trying to discourage it. On
24 the other hand, you know, here we'll have a couple, I think we'll
25 have about 200 plus cars. And there's an opportunity here to

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1 keep these cars off the alley.

2 If you look at this project here, which we are also
3 doing with Mr. Jemal, which is a residential project, here for
4 example, we have a whole series of historic buildings along here
5 and we didn't have the possibility of putting a garage entrance
6 off the street.

7 So they did allow us to come in through the alley
8 and park, I think roughly, 50 or 60 cars, a much smaller number,
9 having access off the alley. I think they are trying to take a
10 fairly realistic approach and just reduce the amount of traffic
11 back there.

12 MR. PARSONS: All right, thank you.

13 CHAIRPERSON GRIFFIS: Any other questions? Good.
14 Thank you very much.

15 MR. GLASGOW: We'd like to call the next witness,
16 Ms. Emily Eig.

17 CHAIRPERSON GRIFFIS: Why don't we just make a
18 formal decision here in terms of the expert witnesses, and I'll
19 hear any opposition to the witnesses that were offered as experts
20 for today. And if there are not any oppositions and discussion,
21 we can take that as a consensus of the Board.

22 Mr. Glasgow has pointed out that we have accepted
23 all of those prior. Any opposition? In which case, it has been
24 formally decreed then. We can continue.

25 MS. EIG: Good morning, I'm Emily Hotaling Eig, an

1 Architectural Historian and Preservation Consultant with the HT
2 Traceries, and I appreciate the opportunity to speak. And you
3 may remember that the last three times that I was scheduled to be
4 a witness, you accepted my testimony without my presenting it, so
5 that's kind of ironic this time. So I appreciate it.

6 As the Historian and Preservation Consultant on
7 this project, I bring with me a long history of association with
8 the square. The project before you is extraordinarily
9 interesting. It is a unique project because it has so many
10 requirements on it.

11 And I can explain to you a little bit about, about
12 the creation of the idea of this, the alley being interpreted as
13 an historic space, where that idea comes from, as well as try to
14 help you understand some of the situations that are faced by the
15 Developer here on this site.

16 The Downtown Historic District, as you know, is
17 where these building are located. This is also the Pennsylvania
18 Avenue Historic Site District and the Atlantic Building and
19 Ford's Theater are individually designated landmarks.

20 The, that combination, in itself, gives you an idea
21 of how many requirements there on the site before us. Ford's
22 Theater is not part of the site, but it is obviously adjacent to
23 it and obviously a critical building because of its importance to
24 our history. Its quality that has been defined by the Review
25 Board as one of sacredness.

1 And the situation began here back in the 1980's,
2 when the Atlantic Building was condemned when, from the first
3 floor above. The first floor having a cast iron structure, but
4 everything above that was wood frame around, within a masonry
5 load-bearing structure.

6 There was a very short time period when high rise
7 buildings were built as masonry load-bearing. They quickly
8 learned that that wasn't a good idea. That you couldn't go very
9 high without severe fire danger. And the Atlantic was condemned,
10 both because it was collapsing in part and also because of the
11 extreme fire danger.

12 It was essentially little chimneys, is how it was
13 constructed. And the idea came along of trying to preserve at
14 least parts of that building and the adjacent buildings and
15 putting new structure that, in fact, could be usable in its site.

16 Because downtown is, there are a number of us here
17 today who remember downtown as a very depressed and under-
18 utilized area. In fact, it was only until about two years ago
19 that things started to change. And the idea that something could
20 happen, not just at the Atlantic Building, but in the alley, was
21 a product of the Office of Planning.

22 That the people in D.C. felt that this was a
23 historic alley, because of it's association with Booth's escape
24 route. And there was, in the original proposal for the Atlantic
25 Building, there were knock out panels that were intended to allow

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1 access to the alley for something.

2 It was a very nebulous idea at that time, but the
3 Office of Planning really pushed for that in the Memorandum of
4 Understanding that associated with that 1989 approval, there was
5 reference to that. The, recently the project that JBG is doing
6 at 915, 1719 E Street, also has access to the alley for artist's
7 studios, lofts.

8 The parking was put off of the E Street side.
9 There was loading, there is loading on, that is planned for the
10 alley, but that the parking would be done on E Street, as opposed
11 to from the alley in order to limit the parking and access to the
12 alley to vehicular traffic.

13 But let's, let me go to this project specifically.

14 The, as you know this project was long delayed. The approvals
15 from 1989, were never acted upon for many years. However, the
16 mitigation that was the Historic Rec and Building Survey
17 documentation was completed. The building was photographed. It
18 was drawn by the Historic Rec and Building Survey Team.

19 Traceries served as the Historians for that project
20 and prepared all the documentation. There was also an extensive
21 inventory and salvaging of historic materials from the Atlantic
22 Building and the three adjacent buildings.

23 Those materials, for the most part, are still, in
24 fact, on site right now in trailers. We have inventoried them
25 four times over the last 14 years. And some of them,

1 unfortunately, parts were stolen because of, they were so
2 attractive, and trailers were broken into various times.

3 But right now they are very well secured in their
4 site and we have inventoried that there is, in fact, enough
5 material to do what had been promised back in 1989. The new
6 project, as proposed, intends to meet all of the preservation
7 requirements of that decision.

8 But adds to it, the historic rehabilitation of the
9 three buildings that are on the corner. Maybe you can help me.
10 To the corner of Tenth and F, there are three buildings from, two
11 from the 1870's, and one from 1884, that you can see in the
12 lower, left-hand corner of the right-hand board.

13 The large second empire building of the 1870's, and
14 two smaller buildings that were built, one in 1876, and one in
15 1884. The buildings are under-utilized. And I have been through
16 one of them, from top to bottom, which is the corner building,
17 and pigeons do occupy it.

18 But it has, it has materials in it that have been
19 stored for probably 30 years. It has a Cobbler Shop that used
20 to be there and now it has a Wig Shop on the first floor.

21 CHAIRPERSON GRIFFIS: Do the pigeons pay good rent?

22 MS. EIG: I, you know I didn't really interview
23 them about that question.

24 CHAIRPERSON GRIFFIS: Now, let me interrupt you
25 quickly. Clearly, it's been stated now several times that the

1 past preservation agreements are going to be held --

2 MS. EIG: That's correct.

3 CHAIRPERSON GRIFFIS: -- and that's grand for us in
4 terms of our understanding. Are there new issues attendant to
5 the additional historic buildings? And I think the most
6 important thing for us is how that might relate to, one, the test
7 of the zoning relief that's required for us?

8 I think we have a pretty good understanding of the
9 complexity, but also the intricacies of incorporating those
10 within the larger project.

11 MS. EIG: The three buildings that I just pointed
12 out are contributing buildings to the historic district. They
13 are to be preserved and historically rehabilitated. The, I
14 think, you can see that their location, as they are at the
15 corner, is what would typically be exactly where you would want
16 to put a tall part of the building.

17 So they are being preserved right there. The Lane
18 Bryant, which has long been considered to be a non-contributing
19 structure in the historic district and one that many find
20 offensive to the historic area, would be razed and the new
21 project would be put in its place.

22 CHAIRPERSON GRIFFIS: That is a positive benefit.

23 MS. EIG: Yes it is. It's a 1969, building which
24 is primarily parking with, that had a store at the lower level.
25 The, there is no demolition of any historic fabric in the new

1 section. There, because of the adjacency to Ford's Theater,
2 though, the preservation stakes go up dramatically.

3 How to design a new building that is going to honor
4 the historic character of a building as important to our history
5 as Ford's Theater is. It's been pointed out by the Park Service
6 many times that its importance is not, it's architectural
7 significance, as so many of the buildings in the historic
8 district are, but in fact for its, what happened there.

9 And how does one deal with that kind of situation?

10 And I think that every effort, there have been many
11 negotiations, many conversations about that. The effort is to
12 try to create a space that is to either side of it, as opposed to
13 building right up to it.

14 That there is an area, and I think you can see or
15 have seen how that sort of creates this sort of zone of space.
16 The facades, as they will be designed, and then the skin will
17 obviously take that into account. I think that will not detract.

18 And the effort, I've certainly felt very strongly that something
19 that would balance with the Pepco Building to either side was
20 going to be a very good solution.

21 The Review Board has come to this, you know, at
22 least five, but perhaps more, stories as they see how that
23 develops. Because some of them were convinced of that and others
24 were not.

25 So we're working on that. But I thought that there

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1 was a very good balance situation so that Ford's Theater would
2 stand out as the most important building on the block.

3 The, one part of this was to make an association
4 with Ford's Theater and the Baptist, is its correct name, the
5 Baptist Alley behind, the Booth Escape Route. This, you've asked
6 some questions about who visits that?

7 Well, in fact, the, there has long been a, tours
8 that take place by organizations outside of the city that
9 actually recreate Booth's entire route from the, that day, April
10 14th, 1865. From his morning through to his escape and his
11 eventual death.

12 The, if you believe that he was really killed
13 there. There are those who question that too.

14 CHAIRPERSON GRIFFIS: No conspiracy theories today.

15 MS. EIG: No, conspiracy theories today, right.
16 The, it is also, at this time, the D.C. Heritage Coalition, and I
17 think you're also aware of that, has focused on the Civil War as
18 their primary interpretation of Washington, D.C. They've created
19 a Civil War Historic Trail brochures, they have signage.

20 The JBG project, as part of its Mayor's Agent
21 Agreement, that they will put a sign in the alley that will
22 interpret the alley. Because right now there is a sign on F
23 Street, but nothing in the alley.

24 They hope to provide some, they were supposed to
25 provide some lighting and also to try to encourage other owners,

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1 as development was taking place on that square, to be aware of
2 the significance of the alley. And to work in concert with that,
3 as opposed to in opposition of that.

4 CHAIRPERSON GRIFFIS: Good. So Mr. Parsons is
5 correct in terms of projecting on what is anticipated to happen
6 there. I think we're all pretty clear on the alley then? Good.

7 MS. EIG: The, this signage, the, trying to deal
8 with the fact that people do go in the alley currently, they're
9 not part of the, Ford's Theater does not actually bring people to
10 the alley. That's not part of their tour.

11 They have no access to the alley for the public,
12 currently, but people do go to the alley regularly.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. EIG: And the opportunity here to also deal
15 with the fact that the Atlantic Building, this 1989, approval has
16 a museum aspect. The museum was intended at that time probably
17 to interpret downtown and, sorry, the Atlantic Building's
18 history, but we have discussed that as the interest in the alley
19 has grown, that that might be better served by having a space, if
20 in fact pedestrians are encouraged to go back there, which
21 there's no encouragement or non-encouragement, it just happens.

22 If they would be encouraged, then that museum could
23 be accessed from the Atlantic Building and it could focus on an
24 interpretation of the alley. And Mr. Jemal can speak more to
25 that.

1 The opportunity to have an access so that people
2 could actually experience that, I personally think would be
3 extraordinarily beneficial to an understanding of the city and
4 what happened there.

5 And also increase an understanding of the
6 importance of Ford's Theater, how it worked. I have actually
7 something I can submit to you from 1865, Frank Leslie's
8 illustrated newspaper. It has a little map that was drawn for
9 the newspaper, without the benefit of computer graphics.

10 The, that shows the route that Booth took, not just
11 within the theater, as he assassinated President Lincoln, but
12 also as he escaped from the back door, got on his horse, and went
13 out the alley that accessed to F Street, and down F Street.

14 CHAIRPERSON GRIFFIS: Okay, why don't you submit
15 that and we'll take that into the record. We'll also take copies
16 personally so we don't have to pay for the tours. And then why
17 don't we move on to other issues. If you're prepared to speak to
18 the penthouse, I don't know if --

19 MS. EIG: Well, I think basically is that because
20 of so much interest and because of the Atlantic Building and
21 Ford's Theater both having an important aspect on this site, that
22 everything needs to be done to try to minimize the impact within
23 the possibility of actually doing a project here.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. EIG: This is an extraordinary situation with

1 some many, I mean, we come with, obviously to you with many,
2 very, very complex projects. And this is really up there in
3 terms of that. And also we have facades standing there which
4 does not benefit anyone in this city and should be dealt with.

5 CHAIRPERSON GRIFFIS: Right. That's very true.
6 Anything else?

7 MS. EIG: No.

8 CHAIRPERSON GRIFFIS: Questions from the Board?

9 MR. PARSONS: You used the term that it was very
10 important to honor the historic character of Ford's Theater. And
11 then you went on to describe the importance of facade design of
12 the new building, the Lane Bryant replacement.

13 And what is your professional opinion of the
14 proposal that's been made to us this morning about a loading dock
15 and a parking garage adjacent to this, and what that does to the
16 street environment of the historic character of Ford's Theater?

17 MS. EIG: I do not think that it should be,
18 certainly the parking should be in the alley. I know there's
19 going to be some, I mean some vehicular traffic. I think loading
20 can be more controlled. You can put restrictions on when that
21 happens.

22 But I do not think there should be parking in the
23 alley. The question of Tenth Street right now, it's obviously
24 not a good situation. The Lane Bryant and the gaping hole that
25 is at the front of that is a very bad solution.

1 I would prefer to have parking off of F Street,
2 which is, the city is not in favor of. They want to keep that
3 sacred. And I'm not a traffic expert, but to me that seems the
4 best place for it because it's not in the alley and it's not on
5 Tenth Street.

6 But I have been told by David Maloney that the city
7 is absolutely immovable on that issue.

8 MR. PARSONS: So that would be into Mr. Baranes new
9 facade --

10 MS. EIG: Correct. Oh, yes, yes.

11 MR. PARSONS: -- to the Atlantic Building. Have you
12 studied that Mr. Baranes or have you been discouraged by other?

13 MR. BARANES: We did consider it, but we ran into a
14 stone wall very quickly when we were told that there was no
15 chance in getting approval on that.

16 MR. PARSONS: So would that require the lobby of
17 the building to move to Tenth Street, then? I assume you'd be
18 driving into the lobby area for the garage.

19 MR. BARANES: Yeah, it doesn't necessarily lead to
20 that conclusion because it is possible, certainly, to place the
21 lobby behind one of the historic facades.

22 MR. PARSONS: Oh, I see.

23 MR. BARANES: But we would probably look at
24 shifting the lobby over. We can do it either way.

25 MS. EIG: By the same token, we currently have a,

1 there is access right now on Tenth Street. And I think if it
2 could be moved over, and I think if it could be reduced, the
3 opening could be reduced in size and it could be designed in a
4 way that was complimentary as opposed to just a big hole in a
5 brick wall that has nothing behind it but parked cars.

6 That it's going to be so improved by that, that
7 it's hard for us to take it down until we actually see some
8 drawings of that. It's, there's no question in my mind that it
9 would a better situation even if we still kept parking there.

10 MR. PARSONS: But you're not talking about a one-
11 way garage? A narrow opening down and then --

12 MS. EIG: Well, the opening --

13 MR. PARSONS: -- somehow manage traffic to have a
14 small portal.

15 MS. EIG: The opening right now is not just the
16 garage opening, it's also open to parts that are not, they are
17 the garage, but they're not vehicular access. It is a very large
18 opening.

19 And also it is much wider than the current curb
20 cut, both for the, they, the curb cut is in place but the opening
21 is wider. And then it's further wider for, I guess, ventilation,
22 I don't even know why it is. It's just, it's a very, very large
23 hole, much larger than what would be necessary to actually
24 accommodate vehicles in any design.

25 MR. BARANES: Architecturally, if we just had

1 access to the parking there, we could make that opening about 18
2 feet wide, which is less than half the size of what's there now.

3 And the clearance would only have to be about seven feet, six
4 inches.

5 So it could be a very manageable opening that I
6 think could be incorporated into a good facade design. But the
7 loading, of course, is a very different scale and I think it will
8 be much more of a challenge to deal with.

9 MS. EIG: I just don't think it's as simple as
10 saying, well, let's put it to the back of the building. I think
11 there is something very important there that people in this
12 country, not just are interested, but are increasingly interested
13 in, in our Civil War history.

14 And that the opportunity is right now to do
15 something that would be positive. And to try to come up with a
16 compromise that's going to be best for everybody. That allows a
17 better interpretation and a more complete interpretation of what
18 actually happened that day.

19 CHAIRPERSON GRIFFIS: Good. Other questions? Mr.
20 Parsons, follow up?

21 MR. PARSONS: No, thank you.

22 CHAIRPERSON GRIFFIS: Okay, anyone else? Any other
23 questions? Good.

24 MS. EIG: Thank you.

25 CHAIRPERSON GRIFFIS: And thank you very much. We

1 do have a lot to get through on this Application, so if I might
2 just instruct, we can pick up the speed a little bit and we will
3 hopefully be able to get all the information we need.

4 You know, halfway through what we've done already,
5 I've noticed that there's a nice model, actually, on the floor.
6 And just wanted to have other Board members take a look at that,
7 because I think that's also instructive.

8 Of course, there are photos in the file, but the
9 three dimensional works well. Okay, go ahead.

10 MR. GLASGOW: Thank you. For the next witness I'd
11 like to call Lewis Bollan of Bollan, Smart Associates.

12 MR. BOLLAN: Good morning. My name is Lew Bollan,
13 with Bollan, Smart Associates. We're Real Estate and Economic
14 Consultants to this project. And what I would like to do very
15 briefly is to describe and to discuss some of the economic
16 implications stemming from some of the things that you just heard
17 from Ms. Eig and Mr. Baranes, concerning the various requirements
18 that are being imposed on this building.

19 And to suggest what some of the costs associated
20 with that are, and what some of the lost revenues would be to the
21 Developer from providing that. And those numbers, as you would
22 expect, are rather substantial.

23 Essentially, the Applicant is asking for 32,592
24 square feet of additional FAR space in connection with this. And
25 I've heard Mr. Baranes say that that number is subject to some

1 vary, some slight variation. But that is essentially the number
2 that we've used and that we've worked with.

3 And we value those FAR figures at between 100 and
4 110 dollars an FAR foot. Suggesting that what's being asked for
5 is worth between \$3,259,000.00 and \$3,585,000.00, in terms of
6 benefits, if you will, to the Developer.

7 In return, however, the lost revenues and the
8 costs, the additional costs associated with this project, will
9 total more than nine and a half million dollars. And what I'd
10 like to do is very briefly run through the computation and
11 there's a report that's been filed that you'll have copies of
12 that have all the details and the back up for this.

13 But essentially, the zoning requirements and the
14 various things that result from it, result in a value impact to
15 the building, negative value impact to the building of
16 \$5,218,000.00.

17 And the historic building and preservation
18 implications have an additional loss to the building of
19 \$4,451,000.00. So essentially, Mr. Jemal is giving up
20 \$9,670,000.00, either in additional incremental costs that he
21 will be forced to pay, over and above normal development costs
22 for a building of this size and caliber and prestige and
23 location.

24 Or we'll have a building that will be diminished in
25 value by that combined, by the amount of \$9,670,000.00. So it's

1 a very substantial loss. Let me, let me very briefly run through
2 what the components of some of those.

3 And as I say, a report has been filed with you, so
4 you have or will have copies of that. And I'll do it briefly. I
5 recognize that time is passing.

6 CHAIRPERSON GRIFFIS: Good. Yeah, indeed, we have
7 the report right in front of us so we can follow along.

8 MR. BOLLAN: So you can go along with that. But
9 essentially there are eight, there are eight things in total that
10 have substantial cost implications for this project.

11 The first has to do with lost revenues by
12 relinquishing the most valuable corner office space. And as Mr.
13 Baranes pointed out in this earlier testimony, you're giving up
14 essentially the corner of Tenth and L Street, which is or would
15 normally be the most valuable portion of that building.

16 And instead you will be retaining the three small
17 historic structures on that property. By doing that we estimate
18 that the impact of that will be about \$3.00 per square foot.

19 And working out the mathematics on that thing and
20 capitalizing that at an eight and a half percent capitalization
21 rate, which we believe is a very conservative rate for a building
22 of this quality, location, etcetera, results in a diminution
23 value of \$1,123,000.00 to the building from that action.

24 The second thing has to do with providing 6,000
25 square feet of residential space on site. I'm going, I'm not

1 even going to address the issues of marketability, other than to
2 say that we have some severe reservations as to how marketable
3 6,000 square feet of residential space in an otherwise office
4 building is, but that's a separate issue.

5 I don't know, you know, who is going to be
6 interested in leasing perhaps four to eight apartments that might
7 be developed on that site. But that's a separate issue. But
8 essentially, if that 6,000 square feet, instead of being
9 developed for residential purposes, were developed for office
10 purposes, we estimate that the net rent on that would be about
11 \$35.00 a square foot.

12 That would be then plus operating expenses and
13 taxes. If that 6,000 square feet are developed as residential
14 space, we estimate the gross rent on that at no more than \$18.00
15 a square foot. And that the net rent, after allowing for
16 operating expenses and taxes that would normally be part of
17 residential, would diminish that building rather substantially to
18 the tune of about \$1,200,000.00.

19 And then in addition to that you're going to have
20 to provide a separate access to those apartments. Mr. Baranes
21 indicated they would probably be on the second floor or a lower
22 floor. That means you're going to have to give up some ground
23 floor space, that would otherwise be devoted to retail purposes,
24 to allow for an entranceway and egress to those apartments.

25 And that would diminish the value of the building

1 by another \$62,000.00. So in total, the 6,000 square feet of
2 residential space reduce the value of the building by
3 \$1,262,000.00.

4 Third, there is a requirement that the Applicant
5 provide 3,744 square feet of lobby/museum space. Now obviously
6 some that is just normal lobby space that would be required as
7 part of any office building.

8 Mr. Baranes has estimated that if this was simply,
9 if this requirement were not here, that the lobby for that
10 building would be approximately 2,000 square feet in size. So in
11 other words, another 1,744 square feet of additional space is
12 being called for that would be set aside as a lobby/museum.

13 And there were two things, there are two cost
14 components associated with that. One is the cost of the actual
15 installation of whatever museum artifacts, etcetera to be there.

16 And we estimate the cost of that at about \$250,000.00.

17 But more significantly, we'd be giving up 1,744
18 square feet of space that would otherwise be rented for retail
19 purposes. We estimate the rent on that conservatively at \$30.00
20 a square foot, triple net, and it's actually, in reality, could
21 be quite a bit higher than that.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. BOLLAN: So that too reduces, reduces values.
24 The, there's also a requirement for 35,000 square feet of what
25 are called other preferred uses. And of those other preferred

1 uses, 17,500 square feet, we estimate will be rented at normal
2 market rents, prevailing market rents. And they are primarily
3 retail in nature.

4 But the other 17,500 square feet includes 11,000
5 square feet of cabaret space that is called for as part of this
6 Application. Plus an additional space that will be limited to
7 arts and arts-related tenants and occupants. And we estimate
8 that that 17,500 square feet of space will rent for \$10.00 less
9 per square foot than would be the case if those requirements were
10 not there.

11 That, capitalizing that diminishes the value of the
12 building by another 2,058,000 square feet of space. Fifth, there
13 is the increased cost of the facade itself. And Mr. Baranes has
14 estimated that because of the difficulties in designing this
15 building, the zigs and zags, the peculiar setbacks, etcetera,
16 that will add approximately 1.5 million dollars to the
17 construction costs of the building for providing that facade.

18 Another architectural component has to do with the
19 incorporation of architectural artifacts into the new structure.

20 You've heard Ms. Eig and Mr. Baranes both indicate that various
21 architectural artifacts that have been saved or will be
22 replicated, will be incorporated into portions of that building.

23 And the area that that is to encompass is about
24 18,500 square feet that will have these older materials
25 incorporated into them. The cost, the additional cost, the

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1 incremental cost of providing that is estimated at \$50.00 a
2 square foot.

3 That amounts to an additional \$925,000.00 in costs
4 to the Developer. There's also substantial lost revenue due to
5 the inefficient core location. particularly as it impacts the
6 ninth and tenth floor.

7 Mr. Baranes, in his presentation, pointed out how
8 awkward and how difficult the ninth and tenth floor become
9 because of the various setbacks that are required.

10 And it essentially removes what would otherwise be
11 the most valuable space in the building, the top floors and the F
12 Street location.

13 CHAIRPERSON GRIFFIS: Good.

14 MR. BOLLAN: And we estimate the loss value of that
15 at \$3.00 a square foot. And capitalizing that suggests a loss to
16 the project of \$1,436,000.00. And finally, the, there is
17 agreement that the three small, I believe the word was
18 contributing buildings, will be maintained and restored and
19 incorporated into the project.

20 And those three buildings total 11,814 square feet
21 of space. And we estimate that the incremental cost of restoring
22 and rehabilitating those buildings, as opposed to new
23 construction, and again, at \$50.00 a square foot, suggests
24 additional costs to the Developer of \$590,000.00.

25 So in total, our analysis suggests that the

1 Developer is giving up over nine and a half million dollars.
2 He's either incurring expenses or giving up revenues, which
3 together total just over nine and a half million dollars.

4 And they are asking for relief in the amount of
5 about three and a quarter million dollars. So it's almost,
6 almost a three-to-one ratio of what they will give up in terms of
7 what they will get in return.

8 CHAIRPERSON GRIFFIS: Good.

9 MR. BOLLAN: And that concludes my testimony. If
10 there are any questions, I would be glad to answer them.

11 CHAIRPERSON GRIFFIS: Thank you very much, Mr.
12 Bollan. Any questions from the Board?

13 MR. ZAIDAIN: Mr. Chair.

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. ZAIDAIN: Having just received your report,
16 this may be obvious. But in terms of your methodology, did you,
17 what did you use as your baseline? Did you assume that, you
18 know, did you take, okay, in a perfect world somebody could
19 bulldoze this whole corner and build a 120 foot, 130 foot
20 office/retail building and then subtract?

21 And you took that and what the economic value would
22 be at that and then subtract what the zoning requirements are?
23 Or, did you look at what they could do as a matter or right in
24 normal circumstances and then take off what OP has requested in
25 terms of the residential space and things such as that? You

1 know, I'm just kind of --

2 MR. BOLLAN: Yeah.

3 MR. ZAIDAIN: Because it's hard to say, okay, in a
4 typical office building downtown, here's what you could do, when
5 not every typical office building is right next to the Ford's
6 Theater.

7 MR. BOLLAN: Correct.

8 MR. ZAIDAIN: And in a historic district.

9 MR. BOLLAN: We tried to incorporate each of those
10 things into it. I mean if you scan that report you'll see on an
11 item-by-item basis. What we attempted to do was to look at
12 incremental costs or, in terms of additional cost that the
13 Developer would incur, due to the requirements that have been
14 imposed on the building.

15 Or to look at the diminution in value that would
16 result from peculiarities. For example, having to develop a
17 museum. I don't know of any office building in Washington that
18 has a small museum incorporated into it. So there are costs
19 associated with that, of both providing and of the space that
20 they give up.

21 So what we've tried to do is to look on an item-by-
22 item basis and make realistic and I hope conservative estimates
23 as to what they would incur. And not simply assume a blank
24 slate.

25 CHAIRPERSON GRIFFIS: Mr. Parsons.

1 MR. PARSONS: A follow up. I find this very
2 curious, this concept of going into this piece of property and
3 comparing it, as I grasp it, as to a matter of right building on
4 K Street, with no restrictions other than the normal zoning.

5 I mean to say that the zoning regulations in DDD,
6 which are quite familiar to everybody in this area, and to apply
7 them as losses, I don't grasp the purpose of that.

8 Go to residential specifically. I mean why do you
9 bring that into the loss column as though you were comparing it
10 to a project on the other side of the city?

11 MR. BOLLAN: Well, that's correct. But the fact of
12 the matter is 6,000 square feet of residential space, it strikes
13 us as neither fish nor fowl. It's not truly a residential
14 project in nature. And I'm tempted to say that if the
15 residential requirement were greater, it perhaps might actually
16 almost work better. Although I'm certainly not suggesting that.

17 But 6,000 square feet of residential space isn't an
18 apartment building. It doesn't really provide a residential
19 environment. It would provide at an average of 1,000 square
20 feet, probably about six apartments. And I don't know how that
21 would work. I don't know how we would rent it.

22 I don't know who, how you would service it. I
23 don't know how you would deal with the mechanical, you know,
24 issues, associated with the maintenance of apartment buildings.
25 The access to it, the security. It just doesn't, it doesn't lend

1 itself to that.

2 And as a result it struck us, as we looked at this,
3 that a severe hardship, if you will, was being imposed by that
4 requirement.

5 MR. PARSONS: You don't think he could place
6 apartments on the corner of F and Tenth Street and market them?
7 In those historic buildings?

8 MR. BOLLAN: Apparently the decision has been made,
9 and I can't give you the answer as to why, but the decision has
10 been made not to put the apartments in that location.

11 MR. PARSONS: I understand that, but I mean I can't
12 imagine them not being marketable.

13 MR. BOLLAN: Six apartments, they will not be in
14 the historic building where you could argue that they would have
15 a certain charm and character that would be very difficult to
16 replicate.

17 But my understanding is that that is not the
18 decision. That this is going to be in the older portion, I'm
19 sorry, in the newer portion, in the new portion of the building
20 where it's not going to have that charm and character and other
21 kinds of things.

22 And I do question the desirability of those
23 apartments. Six apartments in what is essentially a 290,000
24 square foot office building?

25 MR. PARSONS: Well, I'm not going to argue with

1 you. I just think that's the wrong, the wrong way to look at
2 this. And we're talking about people living above retail in
3 downtown. And that's the whole purpose of these requirements.
4 We have to say is this a viable apartment building.

5 It's no different than it is in European cities, I
6 mean that's the concept. And of course Mr. Glasgow has already
7 told us this morning he's going to try to sell these somewhere
8 else. So I'm really having difficulty with some aspects of your
9 analysis.

10 And I wondered why in the Page 5 at the end, some
11 of these things are thrown to zoning and your summary table. In
12 other words the lobby/museum space is characterized as something
13 that's required by zoning. Is that true?

14 MR. BOLLAN: Well, it's something that's required
15 by public action, put it that way. It's not a zoning issue.

16 MR. PARSONS: But it's probably in the historic
17 preservation category, isn't it Mr. Glasgow?

18 MR. GLASGOW: Yeah, that's what I was --

19 MR. BOLLAN: Yes, Yes.

20 MR. GLASGOW: I think that the heading, zoning
21 requirements, we had talked yesterday and I see Mr. Bollan has,
22 on Page 5, has put land use and development constraints
23 underneath the summary of economic development losses.

24 MR. PARSONS: Yes.

25 MR. GLASGOW: That heading should have been, where

1 it says zoning requirements, that heading should have been over
2 that and zoning requirements stricken.

3 MR. PARSONS: Oh, I see. Oh, okay.

4 MR. GLASGOW: Because then you'll see we don't have
5 a residential requirement on this site.

6 MR. BOLLAN: Exactly.

7 MR. GLASGOW: So it is something that has been
8 imposed as a part of this development process. And also when he
9 talked about the 35,000 square feet, our requirement for
10 preferred uses is about 17,000 square feet. And he said that
11 would be market. And it's the additional 17,000 square feet,
12 17,500, that is generating the \$2,000,000.00 worth of cost.

13 So we have done what you've talked about. We have
14 not, we have not disregarded the regulations. We've taken the
15 regulations in their context and said this is what these
16 additional land use and development constraints exist with
17 respect to this project.

18 MR. PARSONS: Imposed by the Historic Preservation
19 process, not the zoning process?

20 MR. GLASGOW: Yes.

21 MR. BOLLAN: Yes.

22 MR. GLASGOW: Yes, that's why we used the heading
23 land use and development constraints as we've gone through.
24 Because we've also taken as a given the existing Mayor's Agent
25 Order which has about 24,800 square feet of preferred use in it.

1 That's for the project that's sitting there dead in the water on
2 F Street.

3 And we will honor everything that's in that project
4 and then we're adding some to it.

5 MR. PARSONS: Okay, thank you.

6 CHAIRPERSON GRIFFIS: All right. And Mr. Parsons
7 you're bringing up excellent points and I think the Board is
8 going to have to take a look further at that report. But Mr.
9 Glasgow, would I be correct in saying that this, as you have put
10 together this, the presentation today, that this facilitates our
11 understanding of the realities of the development, but doesn't go
12 directly, or are you -- correct me. That it doesn't go directly
13 to making the entire case and points for the variances or special
14 exception?

15 MR. GLASGOW: No, not all of those because it's
16 everything together. It's the complexity of the project as
17 discussed by Mr. Baranes and Ms. Eig, and then the component
18 that's thrown into the equation by Lew Bollan.

19 There will be testimony by Mr. Sher. And then also
20 there will be, our Traffic expert will also be testifying. So
21 it's, and then at the end we're going to have a summary and
22 testimony by Mr. Jemal. So it's all of that together --

23 CHAIRPERSON GRIFFIS: Indeed, okay.

24 MR. GLASGOW: -- is making up the case.

25 CHAIRPERSON GRIFFIS: Well, and the Board is going

1 to have to weigh the amount of influence it has on our
2 deliberations in terms of the economic argument. As you well
3 know, that may take us a long time if you want to stand on that
4 alone. Clearly, you're not going to do that.

5 So with that, why don't we move on and get to the
6 next witnesses, and why don't you summarize what they're going to
7 say or have them summarize before they go in.

8 MR. GLASGOW: Sure, I'd like to call Mr. Osborne
9 George. He will be talking about the ingress, egress and the
10 alley system, and I think he can provide that fairly summary
11 fashion for you.

12 CHAIRPERSON GRIFFIS: Okay. Good, and I'd
13 absolutely would anticipate that. Clearly you're going to be
14 talking about the ingress and egress of loading and parking off
15 of Tenth Street, correct?

16 MR. GEORGE: That is correct.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. GEORGE: Mr. Chair, Osborne George, for the
19 record. I have submitted a witness card. In order to assist me
20 in making my presentation brief I have prepared an exhibit. I
21 have four copies of which I am prepared to make available in
22 order that the Board could be, would not have to distress their
23 eyes.

24 CHAIRPERSON GRIFFIS: Right. Why don't you proceed
25 while that is distributed.

1 MR. GEORGE: Mr. Chair, we were requested to
2 examine the development proposal from the perspective of
3 vehicular access and it's loading needs, and within the context
4 of the relief that is being sought before the Board.

5 Our attention was drawn to Section 1701.4C, which
6 has to do with the prohibition of driveway access to buildings
7 along Tenth Street. And I would like to add that that
8 prohibition extends to F Street. So both, access is prohibited
9 off both streets.

10 CHAIRPERSON GRIFFIS: And also E Street?

11 MR. GEORGE: That is correct.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. GEORGE: And a number of others. I'd like to
14 point out that these properties which are the subject of the
15 current review, currently do have access of both of those
16 streets.

17 It therefore became immediately apparent to us that
18 the issue has to do with which is preferable in terms of the, the
19 vehicular access as well as the loading access.

20 We have concluded that it is much more preferable
21 and in fact it would be impracticable to have the garage access
22 off F Street for both safety and operational reasons.

23 We've also concluded that the loading access could
24 be served off either F Street or Tenth Street, but we find that
25 Tenth Street is preferable.

1 CHAIRPERSON GRIFFIS: Do you have submissions,
2 written submissions that substantiate that, from F Street? That
3 substantiate your conclusion that it is inappropriate off of F
4 Street?

5 MR. GEORGE: Yes, yes. It has not been submitted.
6 The report has not been submitted. Okay, very good. Yes, yes,
7 we've presented the reasons in the report.

8 CHAIRPERSON GRIFFIS: Good, we'll be able to look
9 at that then.

10 MR. GEORGE: Right, exactly. The issue of
11 operational efficiency of the adjacent intersection is not an
12 issue. However, I think it's relevant to note that Tenth Street
13 is a one-way south-bound street. And a one-way street always
14 presents considerable advantage as far as access to garages or to
15 loading, in fact.

16 Because it minimizes the number of conflicts,
17 vehicular conflicts, as well as conflicts with pedestrian
18 traffic. And so we think that providing the access off Tenth
19 Street provides us with that advantage.

20 Secondly, we'd like to point out that there's an
21 existing garage in a substantially the identical location as the
22 one that is proposed. That it has approximately 250 spaces. I
23 understand that approximately 200 spaces is being considered.

24 So we have a history of a garage being there and we
25 have not been able to identify any safety problems, even though

1 the site is in proximity to the Ford Theater.

2 I'd like to point out also that we have found as
3 part of our survey that there is a significant need for parking.

4 We recognize that this property is located in proximity to
5 Metrorail Stations, the Metro Center as well as the Chinatown and
6 Judiciary Square Metro Stations.

7 However, we found out that there is considerable
8 shortage of parking and I think the Office of Planning has also
9 highlighted that in their report. A further factor is the fact
10 that there is other developments taking place within the area,
11 some of which are not providing any parking.

12 I think perhaps one of the most compelling
13 arguments that could be made or that should be made for locating
14 the access off Tenth Street, is the recommendation of the
15 American Parking Association.

16 Perhaps the definitive text or reference regarding
17 garage entrance is the Dimensions of Parking. And that text
18 notes one key thing that the greatest convenience and operational
19 efficiency is achieved when access to a major street or to a
20 major garage is provided off a one-way street.

21 I think Mr. Baranes touched on it. I think Ms. Eig
22 touched on it. It's not practical to have a two-way garage
23 entrance via a 15 foot alleyway. When you combine that with
24 service access, including large trucks, the situation is only
25 compounded.

1 And I think you would have vehicles backing out
2 into the street in order to allow for the two-way operation of
3 the 15 foot alley. These factors, and again in summary, they are
4 dealt with in greater detail in our report, but I think it allows
5 us to be in complete agreement with the Division of
6 Transportation, DDOT, in the Memorandum of July 1.

7 And so with that, I would say that I concluded my
8 testimony.

9 CHAIRPERSON GRIFFIS: Good. Thank you very much,
10 Mr. George. And we appreciate the graphics and also the trip
11 counts that are indicated that give us some feeling of
12 understanding of what the level of vehicles on Tenth Street will
13 be, as compared to F Street. Questions for Mr. George? Yes.

14 MR. PARSONS: Mr. George, in your brief dialogue
15 with the Chairman you said the E Street was also in the category
16 of prohibited street, curb cuts. And I don't find that in the
17 regulations.

18 CHAIRPERSON GRIFFIS: That was my statement
19 actually in 1701.4, if I'm reading that correctly. 1701.4(c)
20 Tenth Street, N.W., from E to F Street. So I did incorrectly
21 read that. Right, okay.

22 MR. PARSONS: Yes. So E Street does not have that
23 kind of restriction imposed in the zoning regulations.

24 MR. GEORGE: I think there are a number of streets
25 listed there. I know both Tenth and F are, I don't recall all

1 the ones that are.

2 CHAIRPERSON GRIFFIS: See, that's my problem, I've
3 got to read it out loud to really understand it, otherwise just
4 glancing over I interpret it anyway I want.

5 (Laughter.)

6 MR. PARSONS: Well, it's fixed.

7 CHAIRPERSON GRIFFIS: Yeah, okay.

8 MR. PARSONS: I am briefly going through your
9 report here and I assume by your report you mean your July 5th
10 memorandum?

11 MR. GEORGE: That's correct.

12 MR. PARSONS: I do not see a statement, if you
13 could help me find it, about why F Street would be unsafe as a
14 portal for the parking and loading as described by Ms. Eig
15 earlier.

16 MR. GEORGE: I think on Page 6, I can, D on the
17 General Consideration. We find, we point out that I can, D or I,
18 the narrow 15 foot alley entrance off F Street is the only point
19 of access for the square and is inadequate for two-way garage and
20 service loading access.

21 MR. PARSONS: Oh, yes, I understand that.

22 MR. GEORGE: Okay.

23 MR. PARSONS: So you were not coming to the
24 conclusion that if a, if a new garage entrance came off of, out
25 of the building on F Street, that it would be unsafe?

1 MR. GEORGE: Umm --

2 MR. PARSONS: It's the alley system that you
3 analyzed.

4 MR. GEORGE: I think the alley system. It was my
5 understanding that new entrances are prohibited, generally
6 prohibited. And of course the Board could grant relief and allow
7 those. I think the, the problem would be substantially the same,
8 not as acute as if it were via the 15 foot alleyway.

9 And the reason is that you have the combination of
10 movements from a two-way street. So sure, it is done in a number
11 of streets, along a number of streets, that you do have garage
12 access, the question of which was preferable.

13 MR. PARSONS: Now what, in your opinion, would be
14 an adequate alley width? If we were to remove one of these
15 historic structures or move it back and so forth, what would a,
16 would 18 feet be enough?

17 MR. GEORGE: I would think a minimum of 18,
18 preferably 20 feet would be the width.

19 MR. PARSONS: Many 20 foot alleys in this city?

20 MR. GEORGE: There are not, there are some. There
21 are not many, but there are some. I think we were in a case that
22 was before the Board recently dealing with one in the Adams
23 Morgan area.

24 But then again, it's not frequent that you do have
25 vehicle access, particularly serving such a large garage, off an

1 alley.

2 MR. PARSONS: Because we've come to drive across
3 the sidewalks in the city to get to our parking garages, right?
4 That's the manner in which we've become accustomed. There are
5 not many alleys servicing parking garages.

6 MR. GEORGE: I think that is correct. And I think
7 because of the dual function. Now I think the one thing that
8 struck me was that this square, Square 377, is perhaps, is among
9 the largest squares that you do have in, particularly the
10 downtown area.

11 And this alley and this entranceway serves the
12 entire square, including the buildings fronting along E Street.

13 MR. PARSONS: Thank you, that's all I have.

14 CHAIRPERSON GRIFFIS: Any other questions? Thank
15 you very much, Mr. George.

16 MR. GEORGE: Thank you.

17 MR. GLASGOW: I'd like to call the next witness,
18 Mr. Stephen Sher.

19 CHAIRPERSON GRIFFIS: And is this the last witness?

20 MR. GLASGOW: No.

21 CHAIRPERSON GRIFFIS: No.

22 MR. GLASGOW: Mr. Jemal.

23 CHAIRPERSON GRIFFIS: Indeed. We won't call him a
24 witness, actually. We'll give the big summation. Okay. Mr.
25 Sher.

1 MR. SHER: Mr. Chairman and members of the Board,
2 for the record my name is Stephen E. Sher, the Director of Zoning
3 and Land Use Services with the law firm of Holland and Knight,
4 LLP.

5 CHAIRPERSON GRIFFIS: Do you have a submission
6 already written? Thank you.

7 MR. SHER: It's coming.

8 CHAIRPERSON GRIFFIS: Good. Just to note that we
9 will follow along with that so you can highlight.

10 MR. SHER: Follow the bouncing ball.

11 CHAIRPERSON GRIFFIS: Indeed.

12 MR. SHER: Let's see, I think you know where the
13 site is and you know what the area is and you know what the
14 requirements are.

15 CHAIRPERSON GRIFFIS: Yes, yes.

16 MR. SHER: So let us turn then to the relief that
17 is required. I'm on the bottom of Page 4. We have three
18 variances and a special exception.

19 The variances are for the FAR requirement where the
20 DD would, if this were applied in the literal sense, limit this
21 to 6 FAR. We're proposing 8.2 approximately, perhaps a little
22 lower depending on how that element on Tenth Street finally works
23 out.

24 We have the variance on the residential recreation
25 space requirement, where we would propose to provide the 300

1 square feet, but it would either be all indoors or on a separate
2 lot. So one way or another we would require relief from that,
3 given the 6,000 square feet of residential to be included.

4 We have the special exception for the roof
5 structure setback which is, if the roof structure is 15 and a
6 half feet the requirement is 15 and a half feet and in parts of
7 the plan, as Mr. Baranes demonstrated earlier, there are either
8 zero setbacks or less than the one-to-one setback which would be
9 required.

10 And then, let me go back for a quick second to the
11 parking and loading. Because Section 1701.4 applies to driveways
12 which lead to required, and I put the emphasis on the word
13 required parking and loading.

14 Because under Sections 2100.5 and 2200.5, no
15 parking or loading is required for this building because of the
16 existing landmark and contributing buildings, we may not need a
17 variance from that section at all.

18 If the Board determines that that prohibition
19 applies, then we've got a variance situation because, as you've
20 heard before, it's not permitted on F Street, it's not permitted
21 on Tenth Street, and we otherwise have to use the alley.

22 CHAIRPERSON GRIFFIS: So what you're arguing is the
23 Zoning Regs are actually only speaking to required parking and
24 loading, but this not being required goes beyond the spirit and
25 intent of the regulations in prohibiting.

1 MR. SHER: Yeah, I, I know you don't want to
2 prolong the agony here, but if you go back to 1985, when the
3 Zoning Commission was adopting the overall, readopting the
4 overall parking and loading requirements, what the Commission
5 basically said was the control of how you get from a public
6 street onto private property is essentially not a zoning issue.

7 It is a DPW control of a public street issue, and
8 they're the ones that issue permits for curb cuts and tell you
9 whether, where and how you get from a public street onto the
10 private property.

11 CHAIRPERSON GRIFFIS: Generally speaking around the
12 city?

13 MR. SHER: Yeah.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. SHER: In the broad scheme. We, Zoning
16 Commission, have authority only because we can control how you
17 get to required parking, because --

18 CHAIRPERSON GRIFFIS: Right.

19 MR. SHER: -- we set the limits for parking and DPW
20 doesn't set the limits for parking. So we can tell you if you're
21 coming to parking spaces that we make you provide, we can tell
22 you how to get there.

23 CHAIRPERSON GRIFFIS: Correct.

24 MR. SHER: If it's not parking that you have to
25 provide under our regulations, then we don't have any control

1 over it. That was the 1983, 4, 5, theory culminating in
2 regulations --

3 CHAIRPERSON GRIFFIS: But isn't the controlling
4 aspect the access?

5 MR. SHER: Well, but again, it is DPW that controls
6 the curb cut.

7 CHAIRPERSON GRIFFIS: That's fine. Who controls it
8 in this situation?

9 MR. SHER: Umm, it is ultimately DPW, except for
10 the fact that the Zoning Regulations say if you're providing
11 access to required parking, you can't have it here.

12 CHAIRPERSON GRIFFIS: I understand your point.

13 MR. SHER: Now, again, we're here, we've, I think
14 we've said all along what our options are --

15 CHAIRPERSON GRIFFIS: Indeed.

16 MR. SHER: -- and what the issues are and why it is
17 difficult, if not impossible to, difficult to provide the
18 loading, much more difficult to provide the parking off the
19 alley. If you can't do it off the alley, you've got only two
20 choices, F and Tenth, and both of them are prohibited under the
21 regulations.

22 So either you've got to give us a variance on that,
23 or you say we put the parking and loading in the alley which is
24 problematic.

25 Having said all that, I would like to sort of

1 summarize, I think, what you heard and perhaps add a couple of
2 other things. The conditions for the granting of a variance is
3 the three-part test.

4 What is exceptional or extraordinary about this
5 particular property? Well, as you have seen the site plan
6 described, we have the presence of the four landmark facades on F
7 Street. The presence of the three contributing buildings on, at
8 the corner of Tenth and F Street.

9 The facades have to be required. The existing
10 buildings are going to be retained in their entirety. The
11 requirement to salvage material and use artifacts in the new
12 construction. The change in grade which has some effect, albeit
13 not great, on the amount of space actually included in FAR,
14 because the alley is about 13 to 14 feet lower than the F Street
15 side.

16 So that which would ordinarily be underground and
17 not charged against FAR, it's about two, .2 FAR or thereabouts
18 that otherwise gets thrown in the FAR that wouldn't be in FAR.

19 CHAIRPERSON GRIFFIS: Your point with that is
20 granted, we know there is a level change. And your point is that
21 it's exposing parking levels that would, on a traditional
22 building --

23 MR. SHER: Cellar, space that would be cellar-level
24 and not charged against FAR.

25 CHAIRPERSON GRIFFIS: Indeed. Okay.

1 MR. SHER: That's, it's, it doesn't make or break
2 the case, it's just an element that goes into the exceptional
3 situation on the property.

4 CHAIRPERSON GRIFFIS: When to pile on, as they say.

5 MR. SHER: Just about.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. SHER: Okay. And then, as to the residential
8 recreation space, our building covers 100 percent of the lot.
9 The roof areas are either inaccessible to residential units or,
10 and are of insufficient dimensions to accommodate that
11 residential recreation space. And we've just finished talking
12 about the problem created by the regulations of how you get into
13 the parking and loading.

14 CHAIRPERSON GRIFFIS: A point of clarification.
15 I'm not sure it came up, I'm not sure if you can answer this.
16 But the 100 percent lot coverage, is that something, I know we've
17 talked about the building line on the alley.

18 Is that something that was also pushed by HPRB or
19 any sort of the preservation groups?

20 MR. SHER: I was not present at any of the HPRB
21 meetings, so I can't say that they did that. What happens is
22 because of all the setbacks required on both the Tenth Street
23 side and the F Street Side, it pushes the bulk of the building
24 towards the rear.

25 So you wind up with not having any space left

1 because --

2 CHAIRPERSON GRIFFIS: Pushes the bulk of the new
3 building?

4 MR. SHER: Well, umm --

5 CHAIRPERSON GRIFFIS: Yes, I understand your point.
6 You don't need to clarify.

7 MR. SHER: Okay.

8 CHAIRPERSON GRIFFIS: But let me just ask the
9 Architect if, just for a quick yes or no, was that lot coverage,
10 clearly the massing is an important aspect. But was the actual
11 lot coverage discussed as an issue?

12 MR. BARANES: HPRB did not focus specifically on
13 lot coverage, but they did encourage us to push all of the
14 massing towards the rear.

15 CHAIRPERSON GRIFFIS: I see. Okay, that clarifies
16 it. Thank you.

17 MR. SHER: All right, let's see. In terms of the
18 practical, the difficulty that the Applicant would suffer, the
19 substantial cost associated with the historic preservation
20 activities, the facades, the incorporation of the wood frame
21 construction into the building.

22 The inability to spread the density across
23 properties that are not limited to 6 FAR by Section 1707.4. The
24 loss of revenues from the inability to use the prominent corner
25 locations. And then the residential floor space.

1 All of those in total create the difficulty for the
2 owner in having to develop a project which can meet all of the
3 constraints that this project must meet and still be done within
4 6 FAR.

5 Part of the answer is that the, or part of what, I
6 don't want to say what's obvious, but eight and a half FAR was
7 allowed for the previous project on the Atlantic Building site
8 because it was vested before the shop and the Downtown
9 Development District.

10 That's roughly the eastern half of this project.
11 And that density was insufficient to allow that project to go
12 forward to be financed, which Mr. Jemal can speak to a little
13 further if you need more discussion of that.

14 If it could have gone forward, it would have. It's
15 just been sitting there since about three years now that those
16 facades have been in that condition. If there was a way to make
17 that happen, it would have happened.

18 CHAIRPERSON GRIFFIS: Maybe.

19 MR. SHER: Well, and in effect, the overall FAR is
20 lower, because we're not getting the eight and a half on the
21 whole site.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. SHER: So, it's a combination of having enough
24 mass behind that to support all the things that are going on
25 here.

1 CHAIRPERSON GRIFFIS: Okay.

2 MR. SHER: That's what's involved. In terms of the
3 public good, we are providing all of the requirements for retail
4 and arts that the regulations provide for the site. In fact, we
5 have more than double the amount of preferred uses that are
6 required.

7 So we're not seeking to reduce or eliminate or get
8 away from the requirements for retail and arts, which is the
9 primary concern of the Downtown Development District use
10 restrictions as to this site.

11 The height and bulk are consistent with existing
12 and approved development on surrounding properties both in the
13 square and across the street. As has been indicated any number of
14 times, we're using the location of an existing curb cut which now
15 services approximately the same number of parking spaces, maybe a
16 little bit more than what we're proposing to do here. And so
17 with respect to the roof structure --

18 CHAIRPERSON GRIFFIS: I think that's fairly clear.

19 MR. SHER: Okay.

20 CHAIRPERSON GRIFFIS: Does anybody have that in
21 front in of them? Did anyone want to continue on that.

22 MR. SHER: All right, I'll skip the roof structure.

23 CHAIRPERSON GRIFFIS: Yeah, let's move on.

24 MR. SHER: Then the conclusions are that the
25 property is affected by exceptional conditions. The strict

1 application causes a practical difficulty. That you should grant
2 the Application. And I note specifically on the last page, Item
3 F, we have two conditions that we would like the Board to
4 consider as they relate to giving Mr. Baranes the flexibility to
5 make this building ultimately comply with what HPRB will approve.

6
7 And this is language that the Board has given us in
8 other cases, that the Applicant may design the building subject
9 to approval under Law 2-144, provided that those changes do not
10 increase any of the areas of relief that this Board may grant.

11 In other words, if we can make those penthouse
12 setbacks bigger rather than smaller, whatever. And then the
13 second one specifically goes to Mr. Baranes' discussion of the
14 penthouse, that in fact some of that roof may be reduced where
15 possible and with the approval of HPRB.

16 CHAIRPERSON GRIFFIS: Good. Questions, Board
17 members? Yes.

18 MR. PARSONS: I wanted to go back to the issue of
19 required parking. And I'm a little rusty on this regulation so
20 help me Mr. Sher. It's my recollection that the purpose of this
21 provision was that if you had an historic structure in toto, like
22 the ones at the corner of F and Tenth, that certainly we weren't
23 going to require that somebody goes in underneath that and builds
24 a parking garage.

25 But apparently we wrote it in a different way than

1 I understand it, or understood it. What you're saying is that
2 this project is an addition to an historic structure. Therefore,
3 there is no parking requirement for the entire project, is that
4 right?

5 MR. SHER: That's correct.

6 MR. PARSONS: And so we need to rewrite these
7 regulations if that's what it says. Because that is, that is
8 definitely not what our intent was.

9 MR. SHER: Okay. You can look at 2100.5 and 2200.5
10 and that's what they say. Umm, I --

11 MR. PARSONS: You understand the ridiculousness of
12 it?

13 MR. SHER: Well, I do understand --

14 MR. PARSONS: I mean it is ridiculous.

15 MR. SHER: -- it except for the fact that, again,
16 in this situation and in other situations that I'm aware of,
17 there is, we're not asking to say -- well, let me put the other
18 way. We are not proposing not to provide parking.

19 MR. PARSONS: Well, I understand.

20 MR. SHER: Okay.

21 MR. PARSONS: I just --

22 MR. SHER: Yeah.

23 MR. PARSONS: -- wanted to point out, that's one
24 reason we have a Zoning Commissioner sitting on this Board.

25 MR. SHER: Right.

1 MR. PARSONS: Is to discover things like this that
2 were intended to protect a small historic structure for Embassy
3 purposes, frankly. And now is used to accommodate a project --

4 MR. SHER: I don't think it was --

5 MR. PARSONS: -- to this size.

6 MR. SHER: I don't know that it was, that really
7 that size was, that small size was the only issue. Because there
8 are --

9 MR. PARSONS: All right.

10 MR. SHER: -- significant large buildings.

11 MR. PARSONS: All right, let's go to the Woodies
12 Building then. Use that one.

13 MR. SHER: Yeah, exactly.

14 MR. PARSONS: But, you know what I mean. And it
15 was not to have an addition that's this scale.

16 MR. SHER: Umm, I won't say I know that the intent
17 is, but I know what the regulations were because I wrote them.
18 Okay, that's all I have to say about that.

19 (Laughter.)

20 MR. PARSONS: One of us is right.

21 MR. SHER: Yeah. We're both right. We know that
22 the regulations say. What the intent was --

23 MR. PARSONS: Okay, thanks.

24 CHAIRPERSON GRIFFIS: Other questions?

25 MR. ZAIDAIN: Well, your argument on required

1 parking, it's more of a semantical authority argument. It's
2 about who's got the ability to require parking, you know, here
3 and there in terms of DPW and what the zoning allows.

4 From a realistic, functional standpoint, there's no
5 difference between every parking lot that's required and a
6 parking lot that's not required. I mean both parking lots are
7 both going to generate traffic.

8 MR. SHER: Umm, yes, except for the fact that the
9 regulations set minimum standards in the areas that it controls.

10 If I had a requirement to provide 100 parking spaces --

11 MR. ZAIDAIN: Right.

12 MR. SHER: -- they all have to be nine by 19,
13 except 40 percent of them can be eight by 16.

14 MR. ZAIDAIN: Right.

15 MR. SHER: If I provide 200 parking spaces, the
16 remaining 100 parking spaces don't have to be accessible. They can
17 be smaller than nine by 19, because I had met my minimum
18 requirement under what I have to do here.

19 MR. ZAIDAIN: Right, under the zoning.

20 MR. SHER: Right. And so if the regulations say
21 access to a required parking space can go here or there, if I'm
22 not required then the regulations don't cover me. Again, we're
23 not trying to evade the point, necessarily.

24 We're saying, here we are, here are our options.
25 We, in fact, asked for the variance because we wanted everyone to

1 be clear about what we were doing and what this issue was before
2 the Board.

3 So the Board could say put the parking here or put
4 the parking there, access to parking. Or I should say, put the
5 access to loading here or put it there. We think we have
6 demonstrated, through the testimony of the Architect, the Traffic
7 Consultant and others, why we think it ought to be where it is.
8 That's now before you to decide.

9 CHAIRPERSON GRIFFIS: Indeed it is. And that's
10 what we'll do. Is that, is that your intention also, Mr.
11 Zaidain, to withhold the variance?

12 MR. ZAIDAIN: Yeah, I mean basically all I was
13 saying was that whether it is required or not, a parking lot is a
14 parking lot.

15 CHAIRPERSON GRIFFIS: Indeed.

16 MR. ZAIDAIN: It's got to function a certain way.

17 CHAIRPERSON GRIFFIS: Okay. Other questions,
18 clarifications? Very well, thank you very much. Let me, it is
19 11:45. We have two more cases to finish by 12:00, and let me
20 just say that we will go through all of the morning cases today.

21 Clearly it will not be before 12:00. But, in the
22 manner of process, we will continue on. Did you want Mr. Jemal
23 to do a statement now or at the end? Or, Mr. Glasgow, I don't
24 want to orchestrate your piece, but --

25 MR. GLASGOW: Wait until the end.

1 CHAIRPERSON GRIFFIS: Very well. Why don't we move
2 on then to Office of Planning Report.

3 MR. COCHRAN: Okay, for the record, my name is
4 Stephen Cochran, Office of Planning. I certainly don't propose
5 to describe the project. I think that for the most part the
6 Office of Planning Report can stand on its own merits.

7 There are a couple of things, though, that need
8 either clarification or pointing out. Let's just flip through
9 the report real quickly. On Page 3, just for the record, I'd
10 like to point out that the Applicant controls 34,345 square feet,
11 not the 35,288 square feet that the Applicant refers to.

12 That includes, the 35,000 plus includes the
13 presumed, probably almost entirely appropriately presumed alley
14 closure. So that's important when calculating the FAR.

15 Flipping over to Page 6, where we summarize
16 everything. Again, because of that difference in what you're
17 measuring as the site, the range that you, if you do decide to
18 grant a variance on the FAR, the range that you consider would
19 appropriately consider whether or not to include the alley that
20 the Applicant will be requesting closure for or not.

21 CHAIRPERSON GRIFFIS: What's the schedule on the
22 alley closure application?

23 MR. GLASGOW: For the requirements for the alley
24 closing there are certain drawings that as soon as we receive
25 them, then the alley closing application is going to be filed.

1 CHAIRPERSON GRIFFIS: I see. So within the next
2 six months?

3 MR. GLASGOW: It will be much, much faster than
4 that.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. COCHRAN: In the last row, the special
7 exceptions for the roof structure setback, it's been clarified
8 now on Page 5 of Mr. Sher's testimony. It's zero. Okay. On
9 Page 8, the Applicant is indicating now that the 6,000 square
10 feet of residential space may be moved off site.

11 Office of Planning doesn't have any, a problem with
12 that, but if it does, we'd like to know within what kind of
13 radius.

14 CHAIRPERSON GRIFFIS: How are we going to know
15 that?

16 MR. COCHRAN: You may ask for the Applicant to
17 clarify it.

18 CHAIRPERSON GRIFFIS: Okay, so that's what you're
19 proposing? And clarification before an Order is approved?

20 MR. COCHRAN: Exactly.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. COCHRAN: Because we'd still like it to support
23 the notion of a living downtown in the downtown, within the DD.

24 MR. ZAIDAIN: So if they were to proposed to put
25 the 6,000 square feet of residential out in Silver Spring, you

1 probably --

2 CHAIRPERSON GRIFFIS: No, it's not the 6,000
3 residential that's moving. Am I correct? It would be the 300 --

4 MR. COCHRAN: No, actually it is possible that the
5 6,000 square feet of residential will move off site. And we
6 really don't have a problem with that. Say it moves next door to
7 an adjacent building that also happens to be being developed by
8 the same Developer. I'll get into the recreation space
9 requirement later, if you'd like.

10 CHAIRPERSON GRIFFIS: I see, okay.

11 MR. COCHRAN: But if the 6,000 square feet is
12 moving off, because there are so many benefits in this project
13 that have to be taken into account when granting zoning variances
14 and special exceptions, we want to be sure that the benefits are
15 all caught in the right area of town.

16 MR. ZAIDAIN: Well, like you said, I would assume
17 that you would want to see where they are thinking of putting it
18 and provide some kind of recommendation also.

19 MR. COCHRAN: That's right. Okay, on Page 9, it's
20 worth clarifying how many parking spaces are in the Lane Bryant
21 Building and how many parking spaces are actually being proposed.
22 The information we have on Page 9, is based on what the
23 Applicant had at that time.

24 The pattern is certainly clear that the Lane Bryant
25 Building has more parking spaces than the Applicant is proposing

1 in the new building. Which is actually a good thing from the
2 standpoint of reinforcing the downtown shop district objectives
3 of continuity of pedestrian experience.

4 But it would still be worth finding out whether the
5 parking garage contains the 225 versus the 250 that's now
6 suggested, that contains, that be in the Lane Bryant Building, or
7 whether the new building would have 180 spaces or whether it
8 would have the 200 that was suggested today.

9 Either way it's less, which is a good thing. On
10 Page 10, Section 1701.4 does not prohibit curb cuts on E Street.

11 I believe it was Mr. Parsons that pointed that out. He is
12 correct. But it, again, the combination of Section 1701.4(e) and
13 1703.1(b)3 does when considered together.

14 It gives a pretty clear indication of what the
15 hierarchy of streets are for the reinforcement of the pedestrian
16 experience downtown. F and G Street are given more, basically
17 the east/west streets are more important than the north/south
18 streets.

19 So if you're going, even though curb cut, a curb
20 cut is prohibited, a new curb cut or the reuse of an existing
21 curb cut is prohibited on, say, Tenth Street.

22 If you're going to try to reinforce the planning
23 objectives of downtown, the Office of Planning thinks that it's
24 more important to reduce the numbers of vehicles that are
25 entering and exiting from F Street than from Tenth Street. I'm

1 seeing some puzzled looks from at least one member.

2 MR. ZAIDAIN: Well, as I was going through this
3 last night, 1701.4(e) refers to H Street. I would assume that
4 you were referring to (a), Subsection a, which is to --

5 MR. COCHRAN: 1703.1(b)3?

6 MR. ZAIDAIN: 1701.4(e).

7 MR. COCHRAN: Right, that does say H.

8 MR. ZAIDAIN: Right, and you're referring to H?
9 I'm just asking you is that the correct regulation that you're
10 citing?

11 MR. COCHRAN: 1701.4, as I recall, prohibits curb
12 cuts on F.

13 CHAIRPERSON GRIFFIS: No, his point is just the
14 Subsection of 1701.4.

15 MR. COCHRAN: Okay, so you've got that Section --

16 MR. ZAIDAIN: Right.

17 MR. COCHRAN: -- which would seem to say, okay, all
18 these streets are equally important --

19 MR. ZAIDAIN: Right.

20 MR. COCHRAN: -- no curb cuts. Then you go to
21 1703.1(b)3 and you see, well, really, although we're not allowing
22 curb cuts on any of these streets, it's a little bit more
23 important not to allow a curb cut on F Street than it is on Tenth
24 Street, because that emphasizes the need for continuity of the
25 pedestrian experience in the downtown area on those east/west

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1 primary shopping blocks.

2 So I just want to point that out when you get into
3 the consideration of whether to allow or not allow access to a
4 parking garage from Tenth Street versus having the parking garage
5 accessed from the existing alley on F Street.

6 Because you would be undercutting the pedestrian
7 experience on F Street by having another 180 vehicles. Depending
8 upon the turnover ratio, we're looking at 400 to 600 vehicle
9 entrances and exists per day on F Street versus on Tenth Street.

10 MR. ZAIDAIN: I understand your point.

11 MR. COCHRAN: Okay.

12 MR. ZAIDAIN: I just think it was just semantical
13 confusion there. Go ahead.

14 MR. COCHRAN: And finally on Page 13, on our
15 recommendations. We recommend that the Board approve your
16 request of FAR Variance. Again, the range is going to be
17 important. It now appears that the range is somewhere between
18 8.0 and 8.2. One of the flip sides of having the Developer who's
19 willing to deal with the difficulties of a site like this, is
20 that things change fairly frequently and the Mayor's Agent looked
21 at this only yesterday.

22 So we applaud the Developer for being able to move
23 and react so quickly. Unfortunately the Office of Planning
24 couldn't retype its report that quickly. We've referred to the
25 possible movement of the 6,000 square feet of residential space.

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1 The variance shall be contingent on Number 4, the
2 provision of at least 37,044 square feet within or adjacent to
3 the principle lobby. It's actually inclusive of or adjacent to
4 the principle lobby.

5 OP recommends the Board approve the requested
6 parking variance unless otherwise recommended by the District
7 Department of Transportation. If you look at Page 2 of the DDOT
8 Report, it's pretty clear that DDOT would prefer that everything
9 were accessed from Tenth Street.

10 But as was OP, we were deferring to the
11 considerations of the National Park Service in being very, their
12 being very concerned about truck loading access from Tenth
13 Street, for, and the impact on Ford's Theater. We would again
14 rather, in the best of all possible worlds, have it all accessed
15 from Tenth Street, but we could live with either one.

16 Within the planning context, as opposed to the
17 historical preservation context, it may be worth considering
18 whether a lively downtown would benefit from Ford's Theater
19 having easier loading and unloading from larger trucks rather
20 than from the difficulty of moving scenery and what not into
21 smaller trucks that then can get loaded from the alley.

22 But we're fine either way. OP recommends the Board
23 not approve the requested variance for residential recreation
24 space. We've focused on the indoor/outdoor component in our
25 report. We're fine with it being all indoors.

1 If it gets, if the residential stays on site of the
2 proposed development, we're fine with the residential recreation
3 space moving onto the building immediately to the east, provided
4 it's an additional 300 square feet. We don't want the Developer
5 simply to give key card access for the six or eight apartments to
6 the residential space to the east.

7 We still feel that the Developer should provide the
8 additional 300 square feet somewhere in reasonable proximity.
9 And as for the special exception for the roof structure, that's
10 all been clarified with the testimony today on how far the
11 setback would be. And that concludes our theories report.

12 CHAIRPERSON GRIFFIS: Thank you, Mr. Cochran. Does
13 the Applicant have questions of the Office of Planning?

14 MR. GLASGOW: No questions.

15 CHAIRPERSON GRIFFIS: Thank you. Mr. Cochran, very
16 quickly, the 300 square feet are decidedly important enough to
17 Office of Planning to be provided in the area even with the
18 Applicant's submission of the adjacent or nearby facilities.

19 One that I didn't see mentioned was actually the
20 mall that's in walkable distance. But the other pieces that they
21 did also indicate, you still think it's important enough that
22 will facilitate the downtown area.

23 MR. COCHRAN: Yes, we do.

24 CHAIRPERSON GRIFFIS: Okay. Any other questions of
25 Office of Planning?

1 MR. PARSONS: Yes, Mr. Chairman, I want to make
2 sure I understand. Your position on the loading dock is you have
3 no preference over Tenth Street or the alley, is that correct?

4 MR. COCHRAN: That's correct.

5 MR. PARSONS: Okay. Have you been engaged in the
6 discussions that apparently have occurred in other forums about
7 the future of this alley?

8 MR. COCHRAN: No, I have not.

9 MR. PARSONS: Okay, thank you.

10 CHAIRPERSON GRIFFIS: Would it be your position
11 today that you would defer to DDOT in terms of their
12 interpretation of loading and parking access?

13 MR. COCHRAN: That's correct. We, well --

14 CHAIRPERSON GRIFFIS: You would look to them for --

15 MR. COCHRAN: We would look to them for guidance --

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. COCHRAN: -- with respect to the loading
18 access.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. COCHRAN: For parking we do definitely prefer
21 that the parking be accessed from Tenth Street.

22 CHAIRPERSON GRIFFIS: I see.

23 MR. COCHRAN: Unless DDOT says no, this is really
24 bad.

25 CHAIRPERSON GRIFFIS: Okay. Good. Any other

1 questions of Office of Planning? Is there anyone here from DDOT
2 to present the report? Okay. Does the Applicant have the July
3 1, 2002?

4 MR. GLASGOW: Yes, sir.

5 CHAIRPERSON GRIFFIS: I'm sorry, yes?

6 MR. GLASGOW: Yes.

7 CHAIRPERSON GRIFFIS: Good. Okay. And then I
8 understand we have a representative from National Park Service to
9 give testimony. If you're ready, why don't we do that now.
10 Indeed, good afternoon.

11 MS. BLUMENTHAL: Good morning. Good afternoon, Mr.
12 Chairman. For the record, I'm Sally Blumenthal. I'm a Deputy
13 Associate Regional Director with the National Park Service. I
14 have given the staff or you to have the points that I'm going to
15 be making in my testimony, although I have some additional
16 points.

17 And also, the National Park Service Brochure on
18 Ford's Theater and the House Where Lincoln Died, so you can see a
19 little more closely what's on the board in front of you.
20 Somebody said so you wouldn't strain your eyes.

21 First let's talk about Ford's Theater. It is the
22 oldest structure in the neighborhood. It is older than any of
23 the structures that the Historic Preservation Review Board are
24 taking great pains, not that we don't have a historic
25 preservation mission, but even the oldest building in this

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1 project, which is the building up against the alley, is ten years
2 younger than Ford's.

3 Ford's Theater and the House Where Lincoln Died,
4 across the street, were acquired by the Federal Government in
5 1866. It is a National Historic Landmark and it is managed by
6 the National Park Service as the National Shrine to where
7 President Abraham Lincoln was assassinated in 1865.

8 He was shot by John Wilkes Booth in the theater,
9 carried across the street, which you can see in the illustration
10 there in your brochure on the board, and he died the next day.

11 Ford's Theater is one of the few federal tourist
12 destinations downtown, in the downtown retail core. It has been
13 drawing 1.2 million visitors annually to this part of the city,
14 where it has existed through thick and thin.

15 It's reopened as a theatrical playhouse in 1968.
16 We produce, the Ford's Theater Society produces for the Park
17 Service four to six productions a year, and that's about 200
18 productions since 1968. Although great pains have been taken to
19 respect Ford's Theater as architecture, it's importance is far
20 less for architecture than it is for the even that occurred here.

21 The Park Service has four interests here. First is
22 the protection of the Ford's Theater Building and it's setting.
23 Second is to provide a safe and rewarding experience for the 1.2
24 million visitors who attend.

25 To provide a dignified and appropriate setting for

1 the theater patrons and to provide our contribution to a
2 revitalized and thriving living downtown. I'd like to digress a
3 little bit and talk about this alley circumstance. In fact, I
4 was going to use the same exhibit that Ms. Eig used in her
5 discussion of the alley.

6 And as she mentioned, the Park Service doesn't
7 really interpret this alley. It's interpreted primarily by
8 others. Heritage Tourism Coalition and you'll see on the back
9 side of the brochure, the route that John Wilkes Booth took,
10 which is where the re-enactors go on their route.

11 But you will also see on this 1865 newspaper that
12 the alley system at the time of Booth was very different from
13 what it is now. In fact there was an alley that went down to E
14 Street, which is no longer there.

15 But there was also an alley system that went out to
16 F Street at about where the Lane Bryant Building is. You can see
17 the little r's and s's on Ms. Eig's chart. Do you have it in
18 front of you.

19 CHAIRPERSON GRIFFIS: Yes, we do.

20 MS. BLUMENTHAL: So, I guess if it's up to DPW,
21 according to Mr. Sher's argument, to grant curb cuts as opposed
22 to whether a variance is needed, but if the ultimate decision
23 maker is DPW, a curb cut certainly could be placed at where there
24 was, at Booth's time, alley space.

25 We find that somewhat perplexing that Booth's alley

1 has now taken on much more importance than the other part of the
2 resource we manage. We would consider the primary components of
3 this historic resource to be the theater and the box where
4 Lincoln was shot.

5 The house where he died, across the street. And
6 the vibrant theater venue that exists and has existed since 1968,
7 at this location. The National Park Service is opposed to
8 granting this request for a variance for a curb cut.

9 We believe the public alley system is where
10 services are provided to buildings in the urban core. We also
11 believe that the Applicant can control, somewhat, and we would be
12 happy to get into the discussions with the Historic Preservation
13 Review Board, a way to make the interior alley system work.

14 And that was, I believe, Mr. Parsons and Mr.
15 Baranes discussed that earlier, which was to widen the alley,
16 perhaps only to 18 feet once they passed the setback required for
17 the historic Atlantic Building facades on F Street.

18 We do not think this is a unique of extraordinary
19 circumstance. It has nearly 300 feet of alley frontage.
20 Although this alley contributes to the historic district and
21 we've heard a lot about it's significance, the Applicant is also
22 proposing in a future action to request closure of 942 feet of
23 historic alley space.

24 We think that the public good here or our piece of
25 it is Ford's Theater and the House Where Lincoln Died. That

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1 millions of visitors come to this one-block stretch of Tenth
2 Street to see that. It's also a vibrant theatrical venue.

3 We are concerned that a parking lot entrance
4 immediately adjacent to Ford's Theater will create, not only
5 safety issues with the visitors, who are queuing along the
6 sidewalk and at this point the que to the south, down towards the
7 Hard Rock Cafe.

8 But as this part of F Street improves, we expect
9 they will be queuing north as well. Additionally, putting a
10 parking lot entrance, by granting this variance, next to a
11 theater is inconsistent with the dignified entrances that exist
12 at the National, the Warner, the Folger Shakespeare and the
13 proposed Woolly Mammoth Theater, all of which are in the Downtown
14 Development District.

15 DDOT is proposing a streetscape improvement plan
16 for Tenth Street in recognition of its significance and improving
17 the ambiance there. In their report they acknowledge that
18 they've already taken into account a curb cut at this location.

19 However, that could easily be modified if the curb
20 cut were moved. We believe that granting the variance will have
21 a substantial detrimental impact on the public good.

22 I'd like to talk a little bit about the impact on
23 the zone plan and the, this hierarchy of streets issue. The
24 area-wide design standards recognize a one-block stretch of Tenth
25 Street as a very special place.

1 It's the, about only one-block stretch in the
2 regulations. On the other hand, F Street, G Street, H Street,
3 and Seventh Street are all long, sweeping retail and arts
4 streets. At the GR8 blocks each, Seventh Street is also an
5 eight-block stretch of a north/south street.

6 And we simply disagree with the Office of Planning
7 that the Zoning Commission intended a hierarchy of streets, that
8 F Street somehow was more important than one block of Tenth
9 Street. Eight blocks of F Street was more important than one
10 block of Tenth Street.

11 Additionally, these same standards also provide
12 that Tenth Street, as well as the other streets, F and G and H
13 and Seventh, have 50 percent ground-level retail display windows.

14 And we believe that this is an opportunity. If this request for
15 a variance is denied, the museum which is being proposed by the
16 Developer elsewhere in the project, perhaps could go in this part
17 of the project and would be compatible with Ford's Theater.

18 It could tell the story of the escape as well. So
19 we believe granting the variance would have, would impair the
20 intent and integrity of the zone. We're also a little confused
21 and aren't sure where this Office of Planning requirement came
22 for the pedestrian access to the alley that goes from Tenth
23 Street between the National Park Service Building and the
24 proposed project.

25 That's in your conditions. In other words, what we

1 seem to have happening, as Mr. Parsons pointed out, is a lot of
2 decisions about the changing character of this alley.

3 MR. COCHRAN: I don't know whether I'm permitted to
4 answer that.

5 CHAIRPERSON GRIFFIS: Yeah, why don't we finish
6 your testimony and then we can ask a direct question.

7 MS. BLUMENTHAL: I'm finished my testimony and I
8 would be happy to answer questions that the Board might have.

9 CHAIRPERSON GRIFFIS: Fabulous, thank you very
10 much. Does the Applicant have any cross examination?

11 MR. GLASGOW: Just two quick questions. One, just
12 to confirm for this record testimony that was given yesterday.
13 It's my understanding that the Park Service has not had any
14 traffic study undertaken with respect to the access and the alley
15 system, useability of the alley system?

16 MS. BLUMENTHAL: That's correct, we have not. We
17 are not doing a project involving the alley system.

18 MR. GLASGOW: Secondly, with respect to your
19 testimony of uniqueness with respect to this project, are you
20 aware of any other square in the downtown area that has only one
21 access to it that's only 15 feet wide, to an alley system?

22 MS. BLUMENTHAL: I would have to suppose, but I
23 would assume there would be similar alleys in Georgetown and
24 elsewhere.

25 MR. GLASGOW: I asked in the downtown area where we

1 have higher FARS?

2 MS. BLUMENTHAL: No, no.

3 MR. GLASGOW: Thank you.

4 CHAIRPERSON GRIFFIS: Board members, questions? I
5 think it's very clear that you're letting out, certainly the
6 importance from the Park Service and the two aspects that are,
7 that being that Booth was in the theater and also the adjacent
8 house.

9 But you don't, you have acknowledged that this
10 alley has a significance to the experience of the area, is that
11 correct?

12 MS. BLUMENTHAL: I would acknowledge that others
13 are giving it an experience. The Heritage Tourism Coalition and
14 clearly actions are going on to, to draw attention to the alley
15 through special merit projects.

16 And obviously the re-enactors are using it. But
17 the Park Service is not actively engaged in interpreting the
18 alley.

19 CHAIRPERSON GRIFFIS: Right.

20 MS. BLUMENTHAL: I would also point out that the
21 experience of the assassination would be a probably 10:00 at
22 night experience, because that's when the escape was, somewhere
23 in that vicinity.

24 CHAIRPERSON GRIFFIS: So you're saying they'd have
25 actual stagings that would be even more reminiscent if they did

1 it at 10:00?

2 MS. BLUMENTHAL: Correct.

3 CHAIRPERSON GRIFFIS: But it's not the fact that
4 they wouldn't do it during normal tourist hours?

5 MS. BLUMENTHAL: Correct.

6 CHAIRPERSON GRIFFIS: Okay. And then the other
7 point that you bring up, which I think has great merit in terms
8 of a dignified entrance of the Ford Theater, certainly would be
9 furthered, perhaps, if there wasn't the curb cut there, and the
10 museum was placed perhaps adjacent to the Ford's.

11 And just for clarification, I think it's an
12 interesting point for us to deliberate on. We would, of course,
13 have no jurisdiction to tell the Applicant necessarily where the
14 museum would go or would not go.

15 Unless somehow we put it into a condition that went
16 directly to the relief sought, I don't see us placing that
17 museum. But it's an excellent point that was brought up for our
18 own deliberations. Any other questions? Let us go then to the
19 clarifications from the Office of Planning from the Park Service.

20 MR. COCHRAN: The passageway was showing the
21 Developer's plans and it was in the Office of Planning
22 recommendations simply to be sure that we got as much as we
23 could.

24 MS. BLUMENTHAL: So you view it as a proffer by the
25 Developer rather than a condition by the Office of Planning? As

1 long as it's offered, it's a condition, but if it went away, it
2 would not be a condition of the Office of Planning?

3 MR. COCHRAN: We would not, if various historic
4 preservation groups felt that that access point, and the HPRB
5 felt that way and the Mayor's Agent felt that way, then no, we
6 would not have a problem with it going away.

7 MS. BLUMENTHAL: And it certainly could be
8 accommodated irrespective of how this project were, it's only
9 eight feet wide, it could be accommodated. I just wondered who's
10 --

11 CHAIRPERSON GRIFFIS: Where did it start?

12 MS. BLUMENTHAL: It starts between the property the
13 Park Service owns and the garage.

14 CHAIRPERSON GRIFFIS: There's a site. Yeah, I was
15 interpreting your question. Your question is who, who thought of
16 it first?

17 MS. BLUMENTHAL: I believe the Developer.

18 CHAIRPERSON GRIFFIS: Okay. All right. And you
19 have a position against it?

20 MS. BLUMENTHAL: No.

21 CHAIRPERSON GRIFFIS: In favor of it?

22 MS. BLUMENTHAL: Umm, neither, neutral.

23 CHAIRPERSON GRIFFIS: Indeed, okay. Good, other
24 questions? I can speak for myself, I'm not convinced of its
25 importance or actually what it's doing for the project or access

1 into the alley. But I think we can find out more on that if
2 needed.

3 MR. COCHRAN: Mr. Chair, I believe I could speak to
4 that.

5 CHAIRPERSON GRIFFIS: Briefly?

6 MR. COCHRAN: Very briefly. My impression is that
7 the attempt to develop this alley is to interject some more
8 lively uses into the alley. Much like at least one Developer is
9 doing in Georgetown. Certainly not with that intensity. And
10 that this would provide more access to the alley for pedestrians,
11 should there be additional uses that would have access off of
12 that alley.

13 CHAIRPERSON GRIFFIS: I understand the intent of
14 having it there. My difficulty is, you know, you can put down on
15 a site plan an eight foot sidewalk and call it an access and say
16 people are going to use it.

17 The reality is going to be how it's actually, how
18 it's actually built. I mean what it actually looks like. I mean
19 if it's just going to be a kind of dark and small access in, I
20 doubt anyone is going to use it.

21 Frankly, my personal preference would be walking
22 around the street on the city street than walk down the alley.
23 But that is a clear digression that we don't need to go into.
24 Any other questions from, on that issue or any others of the Park
25 Service, Office of Planning?

1 Very well, thank you very much. And we do
2 appreciate you being here today. Okay, with that, let us run
3 down, the last reports I have noted is the ANC Report. I'm not
4 sure, ah good, thank you. It is Exhibit Number 29. Is there an
5 ANC Member here? Ah, indeed.

6 MR. PADRO: Good morning, Mr. Chairman. Actually,
7 good afternoon, Mr. Chairman and members of the Board. I'm
8 Alexander M. Padro and I'm Advisory Neighborhood Commissioner for
9 Single Member District 2C-01 in Shaw. I am a member of the
10 Commission that has jurisdiction over this portion of downtown.

11 I would like to just provide you with some of the
12 context for the decision that you have in front of you and to
13 make a few comments about some of the testimony that has come
14 before.

15 ANC 2-C has been very concerned about the Atlantic
16 Building project for over a decade, since it first was proposed
17 and since, you know, the Commission lobbied for and received a
18 number of concessions that were included in the Memorandum of
19 Understanding, which allowed, and the Mayor's Agent decision
20 which allowed it originally to go forward in its smaller form
21 than is indicated here.

22 The fact that the project was delayed for such a
23 long time has been a source of continued frustration, both to the
24 Commission and to our community. Because of the number of
25 amenities that were included that have not come on line as yet,

1 and the negative impact that that has had both on the creation of
2 a living downtown and more specifically of the rejuvenation of
3 the retail and commercial nature of this section of F Street.

4 If you look to the east, if you look to the west,
5 over the past decade there has been significant commercial
6 revitalization activity, and those blocks are now quite lively
7 and they have a wide range of different uses as were intended by
8 the decisions that were made in 1988 and 1989.

9 However, with the demolition of the buildings
10 behind the four facades in the year 2000, and the subsequent lack
11 of progress on that project, this really came to a head, both
12 for, you know, the community, the city as a whole, the Commission
13 and the District Government as a major failure of the historic
14 preservation process here in the city.

15 Basically, in our communities, we have a newer role
16 of homeowners who are bound and, you know, bind the historic
17 preservation law and have a great many restrictions placed on
18 them, which they have to observe. And here we have a situation
19 where, you know, a Developer basically was given a great deal of
20 leeway in exchange for some very specific benefits and then as a
21 result never moved forward with the project because the project
22 was flawed from the beginning.

23 There clearly was not enough, you know, potential
24 profit in the project in order to subsidize the significant
25 public benefits associated with it. So when Mr. Jemal and

1 Douglas Development came as a white knight to try to save the
2 city from this very significant problem of having those facades
3 up there as a demonstration of what can be the worst thing that
4 goes wrong when preservation law fails, we were, we and the
5 Commission were most pleased to see this development.

6 And as a result, when the Applicant came before us
7 in April of this year, specifically on April 3rd of 2002, to make
8 an in depth presentation about all of the types of variances that
9 would be needed in order to allow this very complex project to
10 move forward, the Commission, you know, deliberated and found
11 that it was in the best interest of the community and the city
12 that these variances be granted so this project can move forward
13 and allow this site to become an asset for the redevelopment of
14 downtown and for the city's economic prospects rather than a
15 liability as it currently is.

16 No one has spoken previously about the very clear
17 tax benefits to the city of having, you know, the housing there
18 and having that commercial space. And having the retail
19 opportunities that are intended uses of this.

20 You do have a copy of the Commission's letter
21 summarizing our position. I won't go into the detail there.
22 However, I do have a couple of other comments that I would like
23 to make.

24 Number one, there is often a natural tension
25 between federal and local interests in development. And I think

1 this is a case where they are being highlighted. But the fact
2 that Ford's Theater and the National Park Service have not used
3 the alley that represented John Wilkes Booth escape route.

4 And please note that it should not be formally
5 called Booth's Alley, because the Council of the District of
6 Columbia has not taken any action to name it that and only the
7 Council can name a street or an alley.

8 But it has been seen from the local perspective
9 that, you know, the local opportunities in terms of interpreting,
10 you know, the events leading to and following the assassination
11 of President Lincoln, you know, are centered on that alley. And
12 that is why the D.C. Heritage Tourism Coalition and others have
13 been focusing their efforts on making sure that, you know, that
14 there is appropriate signage and lighting, etcetera, there.

15 Because, also, you know, ANC's have a specific
16 responsibility to be looking at the best interests of residents
17 in the city, both those who live in our jurisdiction, as well as
18 those that may be visitors. I think that, although this
19 specifically was not taken up by the Commission, in terms of
20 where access to, you know, the alley for pedestrians should be
21 made available.

22 It's very clear, based on the reports of the
23 experts that we've heard here this morning, that you know, we
24 would be supportive of having that pedestrian passageway from
25 Tenth Street, allowing people to be able to get back there.

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1 Because even if you only have loading for the other buildings
2 that are already in operation, from that alley, that already
3 represents a significant number of vehicles going through that 15
4 foot alley.

5 And obviously you have two-way traffic there
6 because you've got, you know, both cars that are being parked as
7 well as trucks going in and out of the idea of adding, you know,
8 pedestrians to that, you know, very limited space, you know, is
9 just that, you know, a disaster waiting to happen.

10 So I must say that I do concur with the Office of
11 Planning's, you know, suggestion that, you know, if it's possible
12 to take the Developer up on the offer of having pedestrian access
13 from Tenth Street, that would definitely be something that would
14 be a boon to public safety.

15 And then, and lastly the Commission did very
16 specifically state that it's preference would be to have both
17 loading and parking access from Tenth Street. You know, simply
18 because of the logistics, as well as other safety considerations.

19 Both for pedestrians, you know, that would be accessing the
20 alley, as well as those that would be traversing the curb cuts to
21 get to Ford's Theater and, you know, just simply moving along the
22 block.

23 So that concludes my comments. I hope I've been
24 able to give you a little sense of the importance that ANC 2-C,
25 you know, places on this project. And I would certainly urge the

1 Board to give the maximum amount of relief possible so that this
2 project can move forward. And I would be happy to answer any
3 questions.

4 CHAIRPERSON GRIFFIS: Thank you, Mr. Padro. Cross
5 examination from the Applicant? None, okay. First of all, we do
6 appreciate you coming down. Let me pick up on what you just left
7 off on, the eight foot passageway. That's the pedestrian passage
8 off of Tenth Street.

9 Have you given any thought on how that is going to
10 be controlled? Have you given any thought about whether that
11 would be closed off at certain times or open, lighting or
12 anything of that nature? Do you think that the Developer and
13 Architect are well in hand in solving that problem?

14 MR. PADRO: Well, based on my knowledge of the
15 Developers handling of an alley, you know, between Seventh and
16 Eighth Street, between G and H Streets behind where, you know,
17 TGI Friday's, Fuddrucker's, etcetera is located, that is
18 basically a model alley.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. PADRO: I mean it is power washed daily. It is
21 absolutely rat-free in an area where you have a significant
22 rodent problem based on the number of restaurants in the area. I
23 do believe that the Developer is more than capable of handling
24 that.

25 However, certainly lighting is going to be

1 critical. I would suggest that access be open 24 hours, because
2 simply if, let's say that someone, you know, from out of town is
3 just casually visiting the alley, you know, after what we would
4 consider normal hours, and you know, someone with bad intentions
5 were to follow them into the alley, at least they would have a
6 way of getting out of the alley, if they were able to run out
7 through that access to the Tenth Street.

8 CHAIRPERSON GRIFFIS: Okay, so you have great
9 confidence in the Developer and no specific concerns outside of
10 that spoken --

11 MR. PADRO: Based on the Commission's experience
12 with a number of projects that this development has in our area,
13 and the great deal of consideration that has been given to our
14 concerns in the past, we are confident that they are more than
15 able to accommodate those needs.

16 CHAIRPERSON GRIFFIS: Good. And you don't have any
17 concern about the flexibility in the relief asked from this Board
18 today?

19 MR. PADRO: Which aspect of flexibility?

20 CHAIRPERSON GRIFFIS: Well, in terms of the
21 flexibility, one, the FAR. Also in the flexibility of the
22 penthouse. That doesn't cause any concern for you at ANC?

23 MR. PADRO: In terms of the fact that we would not
24 be stipulating a specific FAR?

25 CHAIRPERSON GRIFFIS: Correct.

1 MR. PADRO: We definitely support the Applicant's
2 request for flexibility on that. And the penthouse as well.
3 Those aren't really issues that, you know, what we saw as being
4 make or break.

5 CHAIRPERSON GRIFFIS: Good. Thank you very much.
6 Other questions?

7 MR. ZAIDAIN: Yeah, I'm kind of piggybacking on the
8 flexibility issue. Do you have any preferences on whether or not
9 the residential space is located in the building or off site?

10 MR. PADRO: Thanks for asking that because I
11 actually had intended to mention that. And, you know, because of
12 the cumbersome nature of providing access and services to, you
13 know, residential units incorporated into, you know, a large
14 commercial project like this, I do believe that, you know, we
15 should seriously consider making that residential space, you
16 know, available elsewhere on the block, ideally.

17 Because there are, you know, there is at least one
18 other project that the Developer has underway. But I would say
19 certainly within a three-block radius, you know, at best. And
20 yeah, I do believe that the community would be very supportive of
21 that.

22 Because it still would be bringing, you know,
23 additional residents to the area, you know, that the building is
24 centrally located in.

25 CHAIRPERSON GRIFFIS: Anything else? Good. Thank

1 you very much. I appreciate your attendance today. That is all
2 I have noted for government reports, unless others have notes.
3 Is anyone here to testify either in support or opposition?

4 Let us just note, and it has been noted by the
5 Applicant, there are letters of support in the record. One of
6 the Downtown Cluster of Congregations, which is Exhibit 35,
7 signed by Mr. Terry Lynch.

8 There's also the Downtown Housing Now Committee
9 Exhibit Number 36. And I think that's all I have noted. So, if
10 there's nothing else to cover, we can turn it over to you again,
11 Mr. Glasgow.

12 MR. GLASGOW: Pursuant to what was stated earlier,
13 Mr. Jemal would like to have an opportunity to address the Board.

14 CHAIRPERSON GRIFFIS: An excellent idea.

15 MR. JEMAL: Thank you. Sitting here for the last
16 few hours and going back and forth regarding the alley, but the
17 first thing I'd like to discuss is the residential, the 6,000
18 square feet or so of residential because I know people are going
19 to ask that question, not in Silver Spring.

20 I own a building across the street at 918 F Street,
21 which used to be the old reliable Pawnbrokers and that's probably
22 where it would go if it went somewhere. It would go directly
23 across the street from this project, only because of the
24 efficiencies.

25 So I'd like to cover that first. The second thing

1 that I'd like to discuss is the alley. I think that, needless to
2 say, it's a difficult project. The project by itself and the
3 Atlantic Building by itself, it's been around since 1989, it was
4 a Mayor's Agent case, it's been a long time and it stood.

5 And the economic of it, unfortunately, didn't work.

6 I'd love not to be here today. I'd love to have been sitting
7 with what I have on the corner, the three historic buildings and
8 the Lane Bryant Building, because that by itself works the way it
9 stands right now. It's fully leased.

10 That being said, the situation occurred where I
11 could put the two of these together and develop one great
12 project, and that's really what I intended to do, to do a great
13 project.

14 Recognizing the neighbor being Ford Theater and the
15 historic significance of that building, and being downtown for 37
16 years and watching the activity that Ford Theater has continually
17 had during the good days and during the bad days and now we're
18 back to good days again, and recognizing the fact that there is a
19 million two hundred people that come to the Ford Theater, I just
20 saw an opportunity to create a win/win for everybody.

21 And that's what my intention was to do. To create
22 a passageway on Tenth Street, which you can do a re-enactment of
23 the alley, of some type, and get the traffic that exists now on
24 Tenth Street, where you can't even walk by.

25 And there's a little building right next to the

1 Ford Theater. I don't know what you'd call the building, but
2 it's in bad shape. And you could even enter, once you're in that
3 alley, you can enter into the Theater, to the Ford Theater.

4 So now you have two entrances and you have people
5 that can actually congregate out there and experience some type
6 of a re-enaction of what went on in that alley. Has some of the
7 alley changed from 1865? Sure it has. But a lot of things have
8 changed. Buildings have changed. People have changed. Time
9 goes on.

10 And I've spoken to the Director and I met with Ms.
11 Blumenthal and HPRB and we all spent some time in that alley kind
12 of taking a look at it. And they take between eight and 12
13 stages a year where they redo everything in that auditorium. And
14 they can't get the big trucks back in the alley.

15 So they have to get a small truck that backs up to
16 a big truck. Well, that will take that alley and literally close
17 that alley. Now I don't think we can fix the entire alley, but I
18 think we can fix the alley behind the Ford Theater.

19 The only building, other than Ford Theater, is the
20 Pepco Building. And Pepco Building is an office building. So if
21 we gave them access or restricted some access to the loading
22 birth in my building, I think it would help all three buildings.

23 And that would give us the pedestrian type of alley
24 that, I think we're kind of, I want to try to look at the big
25 picture rather than just look at my building and your building

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1 and let's look at everybody's building.

2 And that's what my intentions are. So I think it's
3 important to leave the loading and the parking garage entrance on
4 Tenth Street. I just spoke to Shalom a few minutes ago. He
5 could move it further north from where it is right now, getting
6 it further away from Ford Theater, which I think would help.

7 And I think as far as the lighting, I think we can
8 address those issues. I think the Architect can address those
9 issues. I think we should do the cobblestones. I think we
10 should do things that reflect what it was like in 1865.

11 I think, I mean we're starting to have these horse
12 and buggy rides downtown, I think it would be. Then I need to
13 cover the FAR, which I will. In order to make the project work
14 we need this additional FAR on the, I'll call it the Lane Bryant
15 Building.

16 MR. GLASGOW: And is that as a result of studies
17 that you've done as to the feasibility of the project to proceed?

18 MR. JEMAL: Well, needless to say, there's a lot of
19 elements to this project and it certainly is complicated. One of
20 these days I'm going to pick something easy. I just seem to be a
21 glutton for punishment. But anyway, this is what I enjoy.
22 That's it.

23 CHAIRPERSON GRIFFIS: Thank you.

24 MR. JEMAL: Thank you.

25 CHAIRPERSON GRIFFIS: Thank you very much, and we

1 appreciate you being here this afternoon. Questions from the
2 Board?

3 MR. PARSONS: Question. I want to thank you for
4 being a glutton for punishment. Not in these proceedings, but
5 the, I really appreciate what you've done for this downtown and
6 continue to do.

7 Could you operate this, market this project without
8 a parking garage at all?

9 MR. JEMAL: I don't believe so. I believe you've
10 done a lot of damage to what it should be.

11 MR. PARSONS: You've done a lot of damage --

12 MR. JEMAL: Without a parking garage, I don't think
13 you could -- would it work? I think someone, I mean I believe
14 that certainly Woodies is marketable and it has no parking. I
15 think you've affected the rent by probably more than five to
16 seven dollars a foot.

17 MR. PARSONS: So, that's not a solution here?

18 MR. JEMAL: I just think, big picture-wise, what
19 we're lacking and what's going on downtown, I think that we need
20 every single parking spot that we can get.

21 MR. PARSONS: Now I'm interested in what you, the
22 dialogue you just had with Mr. Baranes. Not on the record, but
23 out in the hall. Is this concept, I'm looking at this drawing
24 rather than you. Is this concept of moving north with the portals
25 for parking and loading something that could be submitted to the

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1 Board as an alternate?

2 MR. JEMAL: Yes, it can.

3 MR. PARSONS: I think that would be most helpful.
4 I mean if we're really talking about going way up to the other
5 end of this new building, that's a different circumstance, I
6 think. So I'd request that be submitted for the record, Mr.
7 Chairman.

8 CHAIRPERSON GRIFFIS: I think that makes sense. If
9 there was an investigation of new placement of that. There's two
10 issues that come in mind, just to put in perspective. One, this
11 is basically trying to reuse an existing, which helps, I think, a
12 little bit of the test. If that goes away, that goes away.

13 But clearly my understanding is you wouldn't be
14 bringing it up that, directly to the corner. First of all, we
15 have a setback from the corners on that. But then we have the
16 historic structure.

17 MR. BARANES: Right, we would bring it up directly
18 adjacent to the rear of the storage structure.

19 CHAIRPERSON GRIFFIS: I see. Okay, that, I think
20 that would be important to see if that's something that's going
21 to be investigated.

22 MR. JEMAL: I think that does a little bit of
23 damage. You might want to look at it on a piece of paper I
24 think. What we're doing is an eight foot walkway. To go back to
25 the alley, I think you'd really want it closer to Ford Theater.

1 So, you know, and if Ford Theater was going to use
2 our loading dock, I think they'd want it further south. So you
3 might want to look at both of them, just lay it down on a piece
4 of paper, because it is a give and take type of situation. And
5 anyone of them work for me, candidly.

6 CHAIRPERSON GRIFFIS: Okay. Well, I think what we
7 would request is actually if those issues would be ballpointed
8 with any submission and a quick drawing of it, that would be
9 great. I don't know if you want to rely on us looking at it and
10 drawing it, because that may get into severe problems.

11 But nonetheless, we'll look for that submission and
12 we can take that in comparison to what's here.

13 MR. PARSONS: Mr. Chairman, I had another request.
14 It's been stated here a couple of times today that the city, the
15 Review Board and Mr. Maloney, I think all three were used, simply
16 would not permit, allow, approve, some other words, a new access
17 on F Street.

18 And I think for us to rely on that kind of hearsay
19 is not enough for me. And I'm not sure how to illicit that in an
20 objective way or in any way. And I'm not sure it's the
21 Applicant's problem. I was almost thinking of getting Mr.
22 Maloney over here somehow, not on, I don't mean today.

23 Mr. Bosberg, somebody to come and speak about this.
24 I mean the decision is very difficult here. And if there's
25 simply no way to eliminate the parking, no way to park in the

1 alley, no way to penetrate F Street. It seems like the only one
2 compromising is the National Park Service here.

3 The rest of the city has decided that it's okay,
4 and I'm troubled by that.

5 CHAIRPERSON GRIFFIS: Well, I think there are
6 several ways to go about that. One, we could ask for, ask the
7 Office of Planning to submit any of the written Orders or
8 Decisions from HPRB that would, might speak to that, and give us
9 some evidence. Two, we could subpoena Mr. Bosberg, which I think
10 would be great fun.

11 (Laughter.)

12 CHAIRPERSON GRIFFIS: I'm not sure we actually have
13 the jurisdiction to do that. Corporation Counsel may correct me
14 on that. Otherwise I'm not, we'd have to set this for a new
15 public hearing and actually ask them to come and present. I'm
16 not adverse to that, I'm laying out the options.

17 Let's first explore Office of Planning and whether
18 they might -- actually the Applicant would probably know if any
19 of the written Orders of Memorandums of Understanding, or
20 anything of that nature, or staff reports spoke directly to that
21 issue?

22 MR. BARANES: I don't recall in the HPRB Hearings
23 that that was directly spoken to. I think the issue with access
24 off of F Street came primarily from DOT and from OP. It wasn't
25 so much a preservation issue.

1 MR. PARSONS: Oh, I thought Ms. Eig said that Mr.
2 Maloney would not agree to it, permit it, approve it, something.
3 That's where I was going.

4 MS. EIG: Well, I can address that. I asked Mr.
5 Maloney and he said to me that the city, as in DOT, the Office of
6 Planning, would not present it.

7 CHAIRPERSON GRIFFIS: I see.

8 MS. EIG: I mean it's like don't ask me this
9 question again.

10 MR. PARSONS: I see.

11 MS. EIG: He was quite adamant about it.

12 MR. PARSONS: So our city is Mr. Cochran.

13 MS. EIG: I guess so.

14 MR. PARSONS: Who we've already subpoenaed so we
15 don't need to worry about Mr. Bosberg. So you think the historic
16 preservation community, not that you speak for all of them,
17 really have not weighed in on this?

18 MS. EIG: That we have not weighed in about this,
19 right. Because it was very clear that the city would not
20 entertain, I mean my conversation indicated to me that there
21 would be no contemplation of that.

22 MR. PARSONS: Right. Thank you, I misunderstood.
23 Then, Mr. Cochran, can I ask you then, is it the concern that a
24 precedent would be set. That other projects would come forward
25 and say, F Street is no longer sacred, it has a parking garage on

1 it? Or what is it that has placed us in this situation?

2 MR. COCHRAN: Mr. Parsons, I'm not going to try to
3 invent an answer to this. In evaluating the project when writing
4 the report, I came across the different sections and noted what I
5 felt were the hierarchy of streets.

6 However, during the historic preservation process I
7 was not asked about a curb cut on F Street. The, no one had ever
8 proposed a curb cut to me on F Street. I was simply evaluating
9 the request for the variance and whether it would be better to
10 allow access from Tenth Street or further burden the alley
11 entrance on F Street.

12 I cannot pretend to having that much authority as
13 to be speaking for the city with respect to Mr. Maloney's
14 comments about the city simply wouldn't let it. You know, I
15 just, my grade level isn't that high.

16 MR. PARSONS: I'm glad you're here to clarify that,
17 thank you. So little would be served by me trying to find, this
18 Board trying to find more information about that, because it
19 really wasn't a proposal of any kind.

20 MR. COCHRAN: The Office of Planning would be happy
21 to try to pursue an answer to your question.

22 CHAIRPERSON GRIFFIS: Well, I think it's something,
23 Mr. Parsons, if I might, we could ask the Applicant to explore
24 that. I think, myself looking at it, from this Board members
25 perspective on F Street, I think you run into an awful lot of

1 issues unless the preservation staff and Board would accommodate
2 a parking access through one of the historic facades.

3 But other than that, you have fairly limited
4 frontage on F Street to, one, accommodate an entrance. And two,
5 to accommodate the parking access. And loading, I would imagine,
6 would be maintained in that also.

7 MR. PARSONS: Well, as I grasp it from these
8 drawings, there is a 50, 55 foot frontage of a new building.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. PARSONS: Between the historic structures.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. PARSONS: Where the lobby is an a proposed
13 retail. And that's the portal I was thinking of stimulated by
14 Ms. Eig's comment.

15 CHAIRPERSON GRIFFIS: Indeed.

16 MR. BARANES: Mr. Parsons, I just also want to
17 point out an associated issue with that, which would be if we did
18 locate it there, first of all, part of the wood count in the FAR.

19 There's about a 13 foot grade drop from that side of the site to
20 the alley.

21 And so we would essentially be entering the site at
22 the high end, at the highest elevation, and then taking the
23 garage rent through the retail, which is all FAR space, down
24 through there in order to reach the parking level.

25 MR. PARSONS: So you might have to reuse the

1 elevator for the parking garage. I'm kidding.

2 (Laughter.)

3 MR. PARSONS: Lane Bryant's.

4 MR. BARANES: Right.

5 MR. PARSONS: One more question for Mr. Jemal. I'm
6 a little confused about your vision of this, this portal. As I
7 understand it's eight feet wide, probably eight to nine feet high
8 and 100 feet long. That is the length of, this passageway on
9 your drawing seem to be 85 or 100 feet long. Now what kind of a
10 space do you imagine that is to lure people in?

11 MR. JEMAL: I think there's an attraction to
12 alleys. I think it's a lot more attractive than sitting at 110
13 degrees on Tenth Street waiting on line to get in. I think it's
14 shady because the buildings shade them. We were back there on
15 numerous occasions.

16 There happens to be a breeze, however it comes, it
17 does come, so it's cool. And it happens to clear up the
18 congestion on Tenth Street. And I think that you can create, and
19 I'll leave it up to the Architects to do. I certainly would have
20 an input on it, but I think something could be created to make it
21 charming, enchanting and yet mystique about the alley that Booth
22 took off out of, or somewhere in that proximity that he took off
23 out of.

24 And I think looking behind it, Ford Theater, that
25 little building that you have over there, it's in dire need of

1 some repairs. That could be also an entrance for people to come
2 in and enter the theater. And again, I'm perfectly willing to go
3 down there and walk.

4 Maybe if I'm not explaining myself on a piece of
5 paper, I think that everybody on this Board, if they went back
6 there and looked at it, would get a sense of feeling of what I'm
7 trying to say.

8 MR. PARSONS: No, I meant the physical space of
9 this 100 foot long tube?

10 MR. BARANES: Mr. Parsons, it's not an alley opened
11 to the sky.

12 MR. PARSONS: Right, right.

13 MR. BARANES: It's a tunnel. There are two similar
14 conditions elsewhere like this. I think they're both in, two
15 that I'm aware of anyway, in Georgetown. One is the access to
16 Canal Square off of M Street back to Blues Alley.

17 That's only one story tall. I think the retail
18 along that has been mostly closed for the last 15 years. So, and
19 then there's another one which is new and hasn't been opened yet,
20 but it's under construction.

21 But the space is there, you can see it, which is
22 the access again off of M Street into Catty's Alley that Eastbank
23 has been developing. Again, it's only one story tall and it goes
24 through the whole block and leads you to the alley in the rear.
25 So in terms of your question of, you know, scale and what does it

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1 feel like, I think both of those would be unreasonable
2 comparisons.

3 MR. PARSONS: Okay, thank you.

4 CHAIRPERSON GRIFFIS: Do we want to schedule a
5 field trip now or wait for Executive Session? I just think it
6 would be valuable to see that, but we can do that on our own
7 time. Okay, any other questions?

8 Is there anything else we need to, anything else in
9 closing?

10 MR. GLASGOW: Yes, Mr. Chairman, we do feel that we
11 have met the burden of proof for the relief requested. We know
12 that there are still some questions and some information with
13 respect to the ingress and egress of the parking and the loading.

14 Mr. Jemal, in his way of phrasing things, which I
15 always find great to hear him as a witness. I know any other
16 Developer I would have would start out with why we have to have
17 the FAR. I have to remind him to tell them why he needs the FAR.

18 He has got, we have some real time constraints with
19 respect to how we're dealing with keeping this project together.

20 As a result of that, I would like to suggest if we could have
21 the Board act today on all the relief requested other than the
22 access to the parking and the loading.

23 This would be extremely important to our financing
24 and some events that are going to be occurring in the not too
25 distant future with respect to that, while we try to work out the

1 parking and loading access, if that would be possible.

2 We believe that we've met the burden of proof for
3 everything, but we know that there is, we need to submit a plan
4 with respect to the relocation of the parking and loading on
5 Tenth Street, consistent with the discussion Mr. Parsons had with
6 Mr. Baranes and Douglas.

7 And we would request that if that's something that
8 the Board would be amenable to doing, while keeping open that
9 other issue.

10 CHAIRPERSON GRIFFIS: Okay. I appreciate that
11 being stated. My anticipation was that we would set this for
12 decision in our August meeting. Does that still pose difficulty
13 in terms of schedule? And I'm not sure, I want to hear it. I'm
14 not sure we can accommodate it, but --

15 MR. JEMAL: It does, it does. And I'll be glad to
16 lay everything out on the table, you know, I'm talking and I'm in
17 negotiations with Carr America as a partner on this project. And
18 Bob Carr is sitting back there as well.

19 And there's a time restraint that I have that I've
20 got to meet on something else. And they can't commit to a
21 project unless they know they have entitlements. So that's,
22 everybody on that Board knows that that's really what we're up
23 against.

24 So if it would be possible along the lines of what
25 Chip just discussed, it would be appreciated. If not, it's up to

1 you.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. JEMAL: Thank you.

4 CHAIRPERSON GRIFFIS: I'm going to ask everyone's
5 patience. We're going to take five minutes and we'll be right
6 back. We'll figure out what we're doing with this and then we'll
7 get very quickly into the next case.

8 And I can assure they will go faster than this one.
9 So, give us five minutes.

10 (Whereupon, the foregoing matter
11 went off the record at 12:48 p.m.
12 and went back on the record at 1:00 p.m.)

13 CHAIRPERSON GRIFFIS: Okay, thank you for
14 everyone's patience. Board members, I would propose that we do,
15 noting the fact that we have had supportive testimony and
16 opposition testimony, I would propose that we remove that portion
17 of this Application for decision today that has the, let us call
18 it the difficulties and also the opposition and the questions.

19 And therefore, if Board members are prepared, I
20 would propose that we move forward on the FAR, the residential
21 recreation space and the special exception under 411, today. And
22 if there's no objections to that, why don't I move approval of
23 Application 16892, with respect to the FAR under Section 771,
24 with respect to the residential recreation space requirements
25 under Section 773, and also for the special exception from the

1 roof structure provisions under 411 and also 770.6 to allow the
2 construction of the tenth story mixed use at the premise 920-942
3 F Street, N.W.

4 I would add to the motion that we will allow for
5 flexibility in the special exception relief for the roof
6 structure in order to provide for two things, both related.

7 One, to provide for the design specifics that will
8 actually help the building massing and animate the penthouse and,
9 as directed by the preservation interests. I would also include
10 in my motion the floor area ratio to be at an 8.2 level.

11 MR. ZAIDAIN: Shouldn't you want that to be not to
12 exceed?

13 CHAIRPERSON GRIFFIS: Indeed. Well, they are
14 always welcome to go below that.

15 MR. ZAIDAIN: Yeah, that's why you say not to
16 exceed.

17 CHAIRPERSON GRIFFIS: Indeed.

18 MR. PARSONS: Second.

19 CHAIRPERSON GRIFFIS: Thank you very much. I think
20 with, actually with the understanding of the time restraints that
21 we do have, I'm not going to speak lengthy on the motion itself.
22 I think the case has been presented strongly.

23 I will have one note in terms of the economics as
24 presented, I take that in my deliberations that it fills in the
25 larger picture of the realities of the constraints and the

1 uniqueness of this.

2 I am not persuaded solely on that issue of look
3 what the city or preservationists have taken away in terms of
4 opportunity lost. And therefore, somehow the zoning should be
5 relieved in order to accommodate or compensate.

6 But the other arguments that were presented I felt
7 very persuasive and clearly the details of the complexity are of
8 great importance. But I will allow others to speak to that if
9 they are so moved.

10 MR. COCHRAN: Mr. Chair, question from Office of
11 Planning?

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. COCHRAN: Are you moving that the alternate
14 language for the residential recreation space that's on Page 14
15 of the Office of Planning report be the language that is adopted?

16 CHAIRPERSON GRIFFIS: What page did you say, 14?

17 MR. COCHRAN: The last page, before the color
18 attachments, 14. That's the one that lets the recreation space -
19 -

20 CHAIRPERSON GRIFFIS: There is a specific issue
21 that you bring up and that the Board is well aware of. I think,
22 frankly, the variance from relief of the residential recreation
23 space, the tests have been made and that is the difficulty of
24 providing not only the outdoor space.

25 I would take an amendment to the motion, I guess.

1 My understanding was that we were entertaining relief from the
2 entire 300 square feet. But I can hear comments on that. OP is
3 obviously, or can clarify this, is looking to, as an alternative,
4 relief from the 50 percent of the exterior. Is that correct, Mr.
5 Cochran?

6 MR. COCHRAN: Our important principle here and one
7 that the Applicant has agreed to, is that wherever, within a
8 certain radius, this residential space may be located, that it
9 will provide an additional 300 square feet of recreation space.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. COCHRAN: And that's fine if it's indoors. As
12 long as that's in the motion, then I think Office of Planning
13 would view it as being consistent.

14 CHAIRPERSON GRIFFIS: I don't have any difficulty
15 in including that in the language, you know, even your own words.

16 MR. COCHRAN: Well, our own words don't actually
17 apply because you've decided to make a decision today. Because
18 our, we wanted you to, wanted the Applicant to furnish to the
19 Board prior to its decision a signed agreement, etcetera,
20 etcetera.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. COCHRAN: So that doesn't apply anymore.

23 CHAIRPERSON GRIFFIS: Right.

24 MR. PARSONS: Well, why don't we pull off the
25 recreation space out of this motion then?

1 MR. ZAIDAIN: I mean if we're going to deal with
2 the residential issue of it, since they've talked about moving
3 that off site, I think the Applicant has made a good case for why
4 they can't make or put the recreation space on the site, given
5 that they have 100 percent lot coverage etcetera, but that
6 doesn't mean they cannot relocate along with the residential.

7 MR. COCHRAN: Well, then the Applicant has agreed
8 to provide additional, not just to give access to recreation
9 space. The Applicant has agreed that they will provide that
10 additional space, so.

11 MR. ZAIDAIN: Why don't we just pull it out of the
12 motion and let them work on it.

13 CHAIRPERSON GRIFFIS: Done. We're looking at FAR,
14 not to exceed 8.2 or looking for approval of a special exception
15 from the roof structure as described in the testimony. Any
16 problems with that, Mr. Parsons?

17 MR. PARSONS: No, that's fine.

18 CHAIRPERSON GRIFFIS: Amend your second on that?
19 Okay. Any further deliberation?

20 MR. PARSONS: I did want to talk about the access
21 issue, but maybe we ought to vote on the other first.

22 CHAIRPERSON GRIFFIS: Yes. Any other speaking to
23 the motion for the FAR? Then I would ask for all those in favor
24 signify by saying, aye.

25 (A chorus of ayes.)

1 CHAIRPERSON GRIFFIS: And opposed?

2 (No response.)

3 CHAIRPERSON GRIFFIS: Let's report that vote. Then
4 let's move briefly onto the, what we need for a deliberation on
5 the last two components of the application and materials that we
6 would anticipate having submitted.

7 MR. PARSONS: Well, we've already got the study of
8 moving the access up Tenth Street for the loading and parking.
9 And given the dialogue we had earlier, I think it would be
10 worthwhile of Mr. Baranes to try F Street.

11 I mean he described some technicalities with it,
12 that is an access onto F Street. Because I really don't think,
13 from what Mr. Cochran said and others that there's really been
14 much discussion about this as a proposal.

15 The other thing I'd like to request is Mr. Sher's
16 legal opinion. I still take exception to and that is this notion
17 that a historic structure can have an addition this large that's
18 no longer covered by requirements for parking.

19 So I'd like to somehow get his, I shouldn't pin it
20 on him, the firm's position on this, this regulation. So that
21 the Corporation Counsel can weigh on this, because I'd like the
22 Order to reflect properly what the true regulation is.

23 CHAIRPERSON GRIFFIS: I think that's appropriate.
24 If, are we anticipating that, actually that can be including any
25 sort of findings of fact and conclusions of law that can be

1 submitted with specific attention to that issue. And that way it
2 can be laid out for us. I have to counter it if need be.

3 MR. ZAIDAIN: Then, I guess, the third request
4 would be to provide clarification on the residential and the
5 recreation space, correct?

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. ZAIDAIN: So you've got those three and I think
8 it would be proper to have all those submitted in a way that
9 allowed the proper Agencies, Corp Counsel, OP, to respond to them
10 and provide analysis to the Board.

11 CHAIRPERSON GRIFFIS: We will provide ample time
12 for that.

13 MR. ZAIDAIN: Okay.

14 CHAIRPERSON GRIFFIS: Up to two days.

15 MR. ZAIDAIN: Okay.

16 CHAIRPERSON GRIFFIS: Anything else? What else did
17 we cover, and let me ask staff if they had anything to add that
18 we have overlooked?

19 MS. BAILEY: Mr. Chair, where are we? Going over
20 some of the things that is to come into the record at this point?

21 CHAIRPERSON GRIFFIS: That's correct.

22 MS. BAILEY: The first thing that I have is that
23 Mr. Jemal had proffered to provide revised plans showing a
24 realigned building. I'm not sure if I'm stating that correctly.

25 But he plans, his revised plans would show the building being

1 pulled back, new schematics.

2 CHAIRPERSON GRIFFIS: Let's get clarification on
3 that. Is that right? So that the new schematic would be for the
4 parking access.

5 MS. BAILEY: For the parking access.

6 CHAIRPERSON GRIFFIS: Is that correct? Okay.
7 Good.

8 MS. BAILEY: Okay. Clarification is needed on the
9 residential recreation space, and that would be coming from both
10 the Applicant and the Office of Planning.

11 CHAIRPERSON GRIFFIS: Good.

12 MS. BAILEY: And Mr. Sher provide documentation on
13 his firm's position concerning the fact that parking would be
14 exempt from this building. Mr. Chairman, I'm not quite sure that
15 we came up or we have discussed publicly the date when the
16 Hearing would be, when the decision would be made.

17 The Application is partially approved, except for
18 the access issue and also the recreation, recreation space issue,
19 and assuming that decision would be made at an upcoming date.

20 CHAIRPERSON GRIFFIS: Indeed. I would propose that
21 we do it on the 23rd? 23rd of July, first thing in the morning.

22 MR. COCHRAN: And, Mr. Chair, do you then have a
23 submission date so that we at OP and DDOT have a chance to
24 respond on the residential issues as well as the loading and
25 parking and F Street access proposals?

1 CHAIRPERSON GRIFFIS: Yeah.

2 MS. PRUITT: Mr. Chair.

3 CHAIRPERSON GRIFFIS: Yes.

4 MS. PRUITT: I'm sorry. In looking at the
5 schedule, that only actually only gives the Applicant, everyone,
6 the Applicant and everyone a week to make submissions.

7 CHAIRPERSON GRIFFIS: That's true.

8 MS. PRUITT: Why don't we, I would suggest, make
9 submissions due on the 23rd --

10 CHAIRPERSON GRIFFIS: Well, actually let's clarify
11 and see if we can get it all done by the 23rd. Mr. Glasgow, are
12 you amenable to get all that in?

13 MR. GLASGOW: If one week, it's one week.

14 CHAIRPERSON GRIFFIS: Okay. So if that came in by
15 Tuesday next, then OP could turn that around by Thursday.

16 MS. PRUITT: Well, then actually both the Applicant
17 and OP would have time to respond to whatever is submitted.

18 CHAIRPERSON GRIFFIS: Right.

19 MS. PRUITT: And then you could use submission
20 responses and findings of fact at the same time on the 23rd and
21 then vote.

22 MR. COCHRAN: Mr. Chair, our response and DDOT's
23 response would not be then due until perhaps oral presentation on
24 the 23rd.

25 MS. PRUITT: No oral presentation. It would be, if

1 you're going to vote on the 23rd, we would like it by the 18th at
2 the very latest.

3 CHAIRPERSON GRIFFIS: Like I said, you'd have two
4 days to turn it around.

5 MR. COCHRAN: I'm confident we'll be able to work
6 with the Applicant on this.

7 CHAIRPERSON GRIFFIS: Okay. We can get that done?
8 It doesn't seem that monumental in the grand scope of what needs
9 to happen. Good, all right. So we'll look for that by the,
10 whenever they said, and we'll be prepared on the 23rd for the
11 final decision making on the last two components of that.
12 Anything else attendant to this case?

13 MS. BAILEY: There would be a special public
14 meeting --

15 CHAIRPERSON GRIFFIS: Correct.

16 MS. BAILEY: -- at 9:00 a.m., Mr. Chairman?

17 CHAIRPERSON GRIFFIS: Indeed. Good, that being
18 said, thank you very much. Have a great afternoon. And let us
19 move directly into the next case. However, just for the record,
20 when staff, as we transition, we are going to request the vote of
21 the motion and we'll just do that on the record as we roll into
22 the next one.

23 MS. PRUITT: So maybe we should actually just
24 reiterate the dates.

25 CHAIRPERSON GRIFFIS: That's fine.

1 MS. PRUITT: Because I'm getting questions up here.

2 CHAIRPERSON GRIFFIS: Oh, I see, all right. Let's
3 do that. If, as people are changing and the next Applicant is
4 coming up, let us just have staff reiterate dates so that we're
5 absolutely sure of what's happening.

6 MS. PRUITT: Submissions from both, from Applicant
7 and OP will be due on July 16th. Responses will be due on July
8 18th. Also, you can produce your findings of fact and
9 conclusions of law at the same time. Correct.

10 CHAIRPERSON GRIFFIS: Sixteenth.

11 MS. PRUITT: No, on the 18th, with decision at the
12 July 23rd meeting.

13 CHAIRPERSON GRIFFIS: And the partial approval, the
14 motion was made, seconded and --

15 MS. PRUITT: Mr. Griffis made motion, Mr. Parsons
16 seconded, Mr. Zaidain, Mr. Etherly is in agreement. Mrs. Renshaw
17 is not present today.

18 CHAIRPERSON GRIFFIS: Great. Thank you very much.
19 Two more to go.

20 MS. BAILEY: Application number 16893 of Carol B.
21 and William F. Stapp, pursuant to 11 DCMR 3103.2, for variances
22 from the lot area and lot width requirements under section 401, a
23 variance from the lot occupancy requirements under section 403, a
24 variance from the open court requirements under section 406, and
25 a variance from the nonconforming structure provisions under

1 subsection 2001.3, for an addition to a row dwelling in an R-4
2 District at premises 611 E Street, S.E. (Square 877, Lot 836).

3 Please stand to take the oath. Do you solemnly
4 swear all firm that the testimony you are about to give in this
5 proceeding will be the truth the whole truth and nothing but the
6 truth?

7 (All persons were sworn).

8 CHAIRPERSON GRIFFIS: Good afternoon. Wish I could
9 say good morning, however, if you don't mind, let me just have
10 everyone introduce themselves and then, and then let me interrupt
11 you again. And you just need to turn the mics on when you speak.

12 MS. STAPP: I'm Carol Stapp from 611 E Street, S.E.
13 here in the District.

14 MR. STAPP: And I'm William Stapp. I'm Carol's
15 spouse.

16 MS. HAIN: I'm Nicola Hain. I'm the architect.

17 CHAIRPERSON GRIFFIS: Okay, and are you presenting

18 --

19 MS. HAIN: Hyattsville, Maryland.

20 CHAIRPERSON GRIFFIS: Are you presenting the case
21 today, or Ms. Stapp?

22 MS. HAIN: She would like to.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. HAIN: I will fill in as needed.

25 CHAIRPERSON GRIFFIS: Okay. This is what I'd like

1 to do. Often times, on submissions that are clear, we can ask
2 the applicant if they would stand on the record.

3 And that would mean, if it's not clear to you, that
4 you do not need to read or write anything that's already been
5 submitted. However, what I want to do with that, if it is
6 amenable to you, is have you just give a very brief opening, and
7 any pertinent points that you want us to highlight that you may
8 think we have missed.

9 I can guarantee we've read the entire case on this.

10 But anything you wanted to highlight quickly and then we can
11 probably move on with this.

12 MS. STAPP: Thank you. Probably the most
13 interesting point about our renovation project at 611 E Street,
14 S.E. is the fact that we will have less lot coverage than we
15 currently do.

16 That is because the open court is now going to be
17 five feet instead of four feet seven, which would not count as
18 being uncovered. So, although it's not a huge difference, we
19 were very happy to see that the proposed lot coverage will be 79
20 percent instead of the current 82 percent.

21 CHAIRPERSON GRIFFIS: I have the documents that the
22 existing is 73 percent. Where is that figure coming from?

23 MS. STAPP: So you did not get something from the,
24 was it the Capitol Hill Restoration Society or the ANC?

25 CHAIRPERSON GRIFFIS: All right, one mic at a time.

1 For some reason we get feedback on those. I don't have the
2 Restoration letter.

3 MS. PRUITT: We actually looked for it, because
4 they usually submit some information on anything on the Hill. As
5 of last night we did not see it, I could, we can check the
6 mailbox today to see if --

7 CHAIRPERSON GRIFFIS: Do you have copies? If you
8 would just present it to the staff and we'll just have --

9 MS. HAIN: Do you want me to fill you in on the
10 detail?

11 CHAIRPERSON GRIFFIS: Yeah.

12 MS. HAIN: In our meeting with the Capitol Hill
13 Restoration Society they pointed out to us that anything that's
14 less than five feet as an open court, which was 4.7 we need to
15 calculate into the existing lot coverage, which I hadn't done
16 before.

17 So, when that was redone, as well as the two foot
18 section next to the garage, it brought it from the 79 percent to
19 the 82 percent. Or the 73 percent to the 82 percent.

20 CHAIRPERSON GRIFFIS: That makes sense.

21 MR. ZAIDAIN: And this project will reduce to 79 is
22 what you're saying?

23 MS. HAIN: Correct, so it actually was a deduction
24 rather than an increase because we had decided that it would be
25 better for both sides, for both houses being dog legs, the other

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1 side only being 3.5 feet from the lot line, to increase it to
2 five feet which then allowed us to not include that area as part
3 of the lot coverage.

4 MR. ZAIDAIN: Okay.

5 CHAIRPERSON GRIFFIS: Okay that makes sense. And
6 if I'm not mistaken, the actual square footage that we're talking
7 about is fairly minimal in terms of lot coverage. If it's not 33
8 square feet or something in that nature. Okay.

9 MS. HAIN: Right. Basically, the footprint, except
10 for that open court is about the same.

11 CHAIRPERSON GRIFFIS: Right.

12 MS. HAIN: But since it was a nonconforming
13 structure to begin with, we have to ask for a variance.

14 CHAIRPERSON GRIFFIS: Indeed. Okay. And the garage
15 that's being redone also, it's footprint is changing, which is
16 changing some of the lot occupancy.

17 MS. HAIN: But actually it is not changing. That
18 part is not changing, because they told us that part has to be
19 included into the lot coverage so we are increasing, but it was
20 always included to begin with because only being two feet wide.

21 See the space between the garage and the property
22 line was only two feet wide. But now we're increasing it to the
23 property line.

24 CHAIRPERSON GRIFFIS: Good. I understand. Okay.

25 Good. What else would you like to bring up to our attention?

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1 MS. STAPP: We have received support from our
2 neighbors and this would be both the, from the adjacent
3 properties, as well as from a good number of the neighbors in the
4 near by properties.

5 Essentially what we're doing is we're taking the
6 home we've lived in since 1980 and leaving the facade intact,
7 other than cleaning it up and repairing it, and then in the back,
8 which will not be visible from the street, taking a rather poorly
9 constructed one story addition to the original 1840's structure
10 and turning that into a two story addition.

11 Which as I say, actually gives us a little less lot
12 coverage, because of the footprint. And then we're increasing
13 the size to the garage, so that it will accommodate a car. Which
14 will mean we can get one vehicle off the street.

15 CHAIRPERSON GRIFFIS: So you're converting a shed
16 to a garage?

17 MS. STAPP: And that's not a bad term for
18 describing the condition of this alleged garage.

19 CHAIRPERSON GRIFFIS: Okay. Board member's
20 questions, clarifications needed?

21 MR. ZAIDAIN: Just to clarify beyond the letter,
22 this is just a letter clarifying, providing them with information
23 from Lyle Schaur, who's their Zoning Chair on the lot coverage.

24 I don't know if this is appropriate Mr. Chair, but
25 can you testify as to what Capitol Restoration Society's position

1 was on the project?

2 MS. STAPP: They, Capitol Restoration Society was
3 very favorably disposed. I think where we dropped the ball is by
4 not sending those correct recalculated figures to him, that
5 you'll notice at the end of that letter, he says, give us the
6 figures so that I can send the letter off.

7 MR. ZAIDAIN: Mr. Schaur's very particular.

8 MS. STAPP: Right. Exactly. And so that really
9 was our mistake not to have then supplied him with these exact
10 figures. He had done some quick calculations which are actually
11 quite close to the final calculations.

12 CHAIRPERSON GRIFFIS: However, it did go on the
13 consent calendar for ensure preservation so one would assume
14 there was some communication with the Restoration Society for
15 that action actually happened.

16 MS. STAPP: Correct.

17 CHAIRPERSON GRIFFIS: Okay. Other questions? Then
18 let us move down to Office of Planning and hear their, summary of
19 their report. And welcome you this afternoon.

20 MR. MORDFIN: Good afternoon Chairman, and members
21 of the board. I'm Stephen Mordfin with the Office of Planning.
22 And as been stated by the applicant, this is an application for
23 five area variances in order to reconstruct building additions to
24 the rear of the existing dwelling and to reconstruct the existing
25 garage.

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1 The one change that the applicant has brought up
2 which would change the variance request for the lot occupancy,
3 does not affect the total percent that would be occupied. It
4 still remains at 79 percent, and the Office of Planning is in
5 favor of granting that reduction rather than an increase of the
6 lot occupancy.

7 This property is located in the R-4 Zoning District
8 and the Capitol Hill Historic District and the Office of Planning
9 recommend approval of the variances. And that concludes the
10 Office of Planning's report.

11 CHAIRPERSON GRIFFIS: Thank you for that summation.

12 I will note that it is a full report and it was very helpful in
13 going through this. Any questions from the applicant of the
14 Office of Planning? Have you seen, do you have copies of their
15 report?

16 MS. STAPP: No. Not of their report.

17 CHAIRPERSON GRIFFIS: All right, we'll get you
18 copies of that.

19 MS. STAPP: Thank you.

20 CHAIRPERSON GRIFFIS: Any questions on the summary
21 that was done? Any further exploration that you need from Office
22 of Planning?

23 MS. STAPP: No, it sounds as if it is as we expect
24 and welcome.

25 CHAIRPERSON GRIFFIS: Okay. Board members,

1 questions of Office of Planning? Very well then. Let's move on
2 to the ANC report. Does anyone have that in front of them, if
3 they would summarize that for --

4 MR. ETHERLY: Mr. Chairman, I have the ANC report
5 in front of us, it is dated June 13, 2002, from ANC-6B, under the
6 signature of Chairperson Kenan P. Jarboe. The letter reads very
7 briefly, at it's regularly scheduled and properly noticed meeting
8 on June 11, ANC-6B voted 8-0, with seven being a quorum, to
9 support the application for the enclosed variances pertaining to
10 lot occupancy and open court requirements.

11 There may be some notation from staff however that
12 the report does not fully comply with our requirements and so
13 there may be a need to address that in some waiver fashion. But
14 perhaps there might be some guidance from staff on that
15 particular issue.

16 MS. BAILEY: Members of the Board, there are
17 specific requirements that the zoning regulations stipulate for
18 submission of ANC reports. This report does contain, some, or
19 most, but not all of those requirements and so if the Board
20 decides to give it great weight, then that must be determined.
21 But as it stands, it does not, it would not get the great weight
22 that it deserves.

23 MR. ZAIDAIN: I have a question for staff, which
24 requirements does it not meet, very briefly.

25 MS. PRUITT: Usually what is required is that there

1 be a vote of the full Commission and not just a single, a quorum,
2 and not just a single member District.

3 MR. ZAIDAIN: Oh, that letter is from a single
4 member?

5 MS. PRUITT: This is a letter from a single member
6 District, correct.

7 MR. ZAIDAIN: Do you know if, again, Mr. Shepard's
8 party --

9 MR. PARSONS: I understand to my knowledge we've
10 never accepted that and given great weight to it. We've accepted
11 it and just taken it as it is, but it's never been given great
12 weight.

13 MS. BAILEY: Are we talking about Exhibit Number 19
14 from ANC-6B, Kenan P. Jarboe, Chairperson?

15 CHAIRPERSON GRIFFIS: Right. Yes.

16 MS. BAILEY: Okay, that is the Chairperson, so,
17 we're talking about, what normally happens, it states the reason
18 for the approval. It could be in one sentence. It indicates a
19 little more detail than what's here.

20 This letter indicates that a meeting was held. It
21 doesn't say that a notice was given to the community, just a few
22 more sentences would do it. It's not mind boggling.

23 CHAIRPERSON GRIFFIS: Well, and I think there's a
24 mistake where they list ANC-6B voted eight to zero. ANC-6B is
25 one single member. So it should be ANC-6, correct? Or 6B is the

1 entire -- I'm sorry, you're right.

2 MS. BAILEY: Yes.

3 CHAIRPERSON GRIFFIS: I'm sorry, that's right. All
4 right, well, there it is. Let's give them a harsh letter to tell
5 them to give us more detail. Any objection to giving great
6 weight on this?

7 MR. ZAIDAIN: Do we have to make a motion to accept
8 it or anything?

9 CHAIRPERSON GRIFFIS: No. We can either --

10 MR. ZAIDAIN: We can accept it, just not give it
11 great weight?

12 CHAIRPERSON GRIFFIS: What's your pleasure?

13 MR. ZAIDAIN: I don't want to talk about it
14 anymore, how bout that, that's my pleasure.

15 MR. ETHERLY: Mr. Chairman, I don't think the
16 infirmities of the letter, as they've been identified by staff,
17 are major. I'd be inclined to make a motion to give it the great
18 weight it is. And accord it great weight and move forward.

19 MR. ZAIDAIN: Okay, I'll second that.

20 CHAIRPERSON GRIFFIS: Very well, all in favor?

21 (A chorus of ayes.)

22 CHAIRPERSON GRIFFIS: And opposed?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Thank you. Okay, any other
25 government reports attendant to this application? I don't have

1 any other notes. Is anyone here to give testimony today
2 attendant to this application? Either in support or opposition.

3

4 We do have letters of support and the petition that
5 were submitted by residents of 613 E Street, residents of the
6 block of 600 E Street, exhibit 23, exhibit number 22 and exhibit
7 number 21, is the letter from resident of 609 E Street, S.E.

8 I will turn to the applicant for any closing
9 remarks that they might have.

10 MS. STAPP: Thank you. We're very pleased that we
11 have managed to come up with a, a plan for increasing our
12 extremely modest sized home that really does not in any way
13 impinge on our neighbors either to the east or the west so that
14 in essence it's an upgrade for all the parties concerned.

15 CHAIRPERSON GRIFFIS: Indeed. Thank you very much.
16 As note the Board is well aware that this could have come in
17 under 223 if not for the lot occupancy.

18 Lot occupancy, as laid in the case, was a difficult
19 one because of the smallness of the site, the limited square
20 footage which goes clearly to the test that we look to.

21 I think the standing on the record on this is the
22 way to go in that I think this does bring a great improvement to
23 a single family residence and after all, if zoning works against
24 that, then what have we actually accomplished?

25 But, that being said, I would move for approval of

1 Application 16893, for the variances as stated, that will allow
2 for the addition of the row dwelling at premises 611 E Street,
3 S.E.

4 MR. ETHERLY: Second it Mr. Chair.

5 CHAIRPERSON GRIFFIS: Thank you very much. Again,
6 I think the number of variances is not what one should look at in
7 terms of this application because clearly they are all attendant
8 to a small upgrade and addition to the single family. And I
9 think the record stands and speaks to the, to the test.

10 First of all, the uniqueness was outlined in terms
11 of the lot itself. That the semi-detached nature of this
12 structure also, in terms of the limited square footage on the
13 site, that clearly making it difficult for accommodation of, one
14 might say contemporary use, but more importantly the upgrade of
15 the existing structure and the accommodation and adjustments that
16 are needed attendant to that.

17 And clearly this application has come in with no
18 opposition. And in opposition clearly look to, not for numbers
19 of opposition, but rather for the information that it brings to
20 our attention in our own deliberations of problems that it might
21 cause. And this clearly has not evidenced any of those.

22 So, that being said, others could speak to the
23 motion. Very well then, I would ask for all those in favor
24 signify by saying aye.

25 (A chorus of ayes.)

1 CHAIRPERSON GRIFFIS: Opposed?

2 (No response.)

3 CHAIRPERSON GRIFFIS: Is the applicant requesting a
4 summary order today?

5 MS. STAPP: Yes, please.

6 CHAIRPERSON GRIFFIS: Okay. I don't need to
7 explain what that is?

8 MS. STAPP: I'm assuming it's a decision that we
9 can go forward.

10 CHAIRPERSON GRIFFIS: Okay, there's two choices you
11 can have. You've had a bench decision. We can do a full order,
12 which takes a while and also lays out all the conclusions of law
13 and evidence and everything that was submitted.

14 Or you have a summary order which is a very brief,
15 very much more expeditious, it does not outline the entire legal
16 reasoning behind the order. Summary order?

17 MS. STAPP: Yes, please.

18 CHAIRPERSON GRIFFIS: I would assume so. Good.
19 Thank you very much. Staff will record the vote and then you are
20 welcome to leave.

21 MS. STAPP: Thank you so much.

22 MS. BAILEY: The vote is recorded as 401 to approve
23 the application. Mr. Griffis made the motion, Mr. Etherly
24 second, Mr. Parsons and Mr. Zaidain is in agreement and Mrs.
25 Renshaw is not present today. And that's a summary order.

1 CHAIRPERSON GRIFFIS: Good. Thank you very much
2 and I appreciate your patience today. Let us call the last case
3 of the morning.

4 MS. BAILEY: Application 16891 of 3221 Eleventh
5 Street LLC, pursuant to 11 DCMR 3103.2 for variance from the 900
6 square feet minimum lot area requirements under section 401. And
7 for the conversion of a row dwelling to a four unit apartment
8 house in the R-4 District at premises 3221 11th Street, N.W.
9 (Square 2845, Lot 27).

10 Please stand to take the oath. The reason I'm
11 hesitating, is Mr. Gell a part of this?

12 MR. WILLIAMS: Mr. Gell is a part of that, at the
13 time you asked about preliminary matters I was going to note Mr.
14 Gell's absence and see what you wanted to do. My name is Lindsay
15 Williams for the record. I'm working with the applicant in this
16 case.

17 CHAIRPERSON GRIFFIS: Well, until you're sworn in
18 we can't believe you that your name is Lindsay Williams. In
19 which case, let's do that and we'll take it up as a preliminary
20 matter.

21 MS. BAILEY: Okay. Do you solemnly swear all firm
22 that the testimony you are about to give in this proceeding will
23 be the truth, the whole truth, and nothing but the truth?

24 (All persons were sworn).

25 CHAIRPERSON GRIFFIS: Okay. Good. Yes, Mr. Gell,

1 are you prepared to go forward or do you tell me what's
2 happening?

3 MR. WILLIAMS: As the Board as fully familiar, we
4 were scheduled as the third case of the morning and the earlier
5 cases took awhile. Mr. Gell, was last seen on the first floor,
6 in the lunch room grabbing something, anticipating being back
7 here momentarily.

8 CHAIRPERSON GRIFFIS: I see.

9 MR. WILLIAMS: But, he was doing some, discovering
10 some paper relevant to the case while we were downstairs eating
11 and I can send out a search party. What is the Board's pleasure
12 in terms of proceeding before or after it takes it's own lunch?

13 CHAIRPERSON GRIFFIS: I would perfectly open to
14 taking lunch now, and making it brief. Other Board members want
15 to chime in on that? And that way you guys can get your team
16 together.

17 MR. WILLIAMS: I apologize.

18 CHAIRPERSON GRIFFIS: No. It's, we have to take
19 lunch sometime

20 MR. ZAIDAIN: I don't think it makes much of a
21 difference, I mean with the afternoon cases, it's going to, we're
22 going to be here forever anyway.

23 CHAIRPERSON GRIFFIS: Okay. Board members, half an
24 hour break?

25 MR. ZAIDAIN: Does Mr. Parsons have to leave?

1 CHAIRPERSON GRIFFIS: Yeah, let's check schedules.

2 Three?

3 MS. BAILEY: Mr. Chairman, I can go downstairs to
4 see if I can find Mr. Gell.

5 CHAIRPERSON GRIFFIS: Well, either way, we're
6 taking a break, so let's make it a ten minute one. We'll check in
7 and when Mr. Gell gets here we'll get back on, and we'll get this
8 done.

9 MR. WILLIAMS: Thank you.

10 CHAIRPERSON GRIFFIS: And then we're going to shift
11 out for lunches.

12 (Whereupon, the foregoing matter
13 went off the record at 1:38 p.m. and
14 went back on the record at 1:50 p.m.)

15 CHAIRPERSON GRIFFIS: Are we ready? Okay. Good.
16 Okay. I believe everyone was sworn in. Mr. Gell, you are not
17 going to be sworn in, is that correct?

18 MR. GELL: That's correct.

19 CHAIRPERSON GRIFFIS: Okay. In which case the case
20 has been called and I think we can jump right into it. It's all
21 your's Mr. Gell.

22 MR. GELL: Thank you very much Mr. Griffis. First,
23 I do want to apologize for not being here when you called the
24 case.

25 CHAIRPERSON GRIFFIS: It's ok. Our cases are a

1 little crazy today.

2 MR. GELL: Yes. And I don't think we're going to
3 take a great deal of your time. This is a request for conversion
4 of a single family house in an R-4 District to four units, they'd
5 be condo units at 3221 11th Street, N.W. (Square 2845, Lot 27).

6 First I'd, I would like to introduce the people
7 with me, Adrian Washington, who is the owner of the property, or
8 who represents and owns the limited partnership that, the LLC
9 that owns the property, and he is president of it.

10 Also with him, are Karen Macadue and Larry Macadue.

11 These folks here, who are his partners. And, Lindsay Williams
12 who will be our planning expert, and I'd like to have him
13 qualified please as an expert witness for planning.

14 I think you have his resume, that was attached to
15 his report.

16 CHAIRPERSON GRIFFIS: Yes. Okay. Let us take up
17 two issues. First, let me say since this is a preliminary
18 matter, I do need to disclose to the Board and to the audience
19 that I do know Mr. Washington.

20 In fact, he and I serve as Trustees on a similar
21 Charter School and secondly I do live in the neighborhood and
22 have some familiarity with the property and the surrounding area.

23 But I do believe that I can be fair and impartial on this, in
24 fact given a hard time.

25 But if there are any questions, or Board members

1 any concerns I can answer those now. Does the applicant have any
2 concern or opposition with me continuing on this case?

3 MR. GELL: We have no objection.

4 CHAIRPERSON GRIFFIS: Okay. Is anyone in the
5 audience attendant to this application. Yes ma'am did you? Why
6 don't you come up to the table if you wouldn't mind.

7 MS. BAILEY: Mr. Chairman, she was not sworn in, so
8 is this a good time to just go ahead and swear her in?

9 CHAIRPERSON GRIFFIS: That would be tremendous.
10 Ma'am if you don't mind just remaining standing for a quick
11 second and giving your attention to the Staff member.

12 MS. BAILEY: That's okay, she can sit. Ma'am, do
13 you swear that the information that you will be giving today will
14 be the truth?

15 MS. MILES: Yes ma'am.

16 MS. BAILEY: Thank you.

17 MS. MILES: My name is Elsie Miles, this owner of
18 the property at 3221 11th Street, N.W. for over 20 years or more
19 and I lived in the property.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. MILES: And there are facts that you need to
22 know.

23 CHAIRPERSON GRIFFIS: Indeed. And so, and I will
24 hear those in your testimony. However, do you have any
25 opposition with me continuing hearing this case today?

1 MS. MILES: You can continue, but I will have a
2 lawyer to look into this matter as well.

3 CHAIRPERSON GRIFFIS: Well, let's be clear on which
4 matter. In terms of my hearing the case, do you have an
5 opposition to that. Is that what you would like to investigate?

6 MS. MILES: No, I'm investigating the outcome of
7 this case.

8 CHAIRPERSON GRIFFIS: Indeed.

9 MS. MILES: And the entrance of this owner, so
10 called owner, of this property and it needs to be investigated in
11 many many ways.

12 CHAIRPERSON GRIFFIS: Okay, but just for total
13 clarification, I have disclosed the fact that I live in the
14 neighborhood and I do know the owner. Do you have any opposition
15 with me continuing on this case or would you like me to recuse
16 myself on this case.

17 MS. MILES: Well, I would like to say that I am the
18 owner of the property by will, and there are too many
19 inconsistencies that have gone on in this case for what needs to
20 be dismissed in this matter and it has to be looked into. The
21 legal way, is my turn is, and others who have known this case for
22 many, many years.

23 CHAIRPERSON GRIFFIS: Okay, and do you feel that I
24 can be impartial on this case?

25 MS. MILES: How can I say whether you're going to

1 be partial or impartial.

2 CHAIRPERSON GRIFFIS: Good. Thank you very much.
3 If I can have you take your seat I will call you when we get to
4 the persons to testify an opposition and we will hear all of your
5 information at that time.

6 MS. MILES: You want me to sit right there?

7 CHAIRPERSON GRIFFIS: If you wouldn't mind ma'am.
8 Thank you very much. Any other concerns? If not I would be
9 prepared to continue hearing this case. Not disowning any other
10 opposition. Mr. Gell we'll turn it back over to you, sir. Oh.
11 Indeed. That was the second issue to bring up, as the expert
12 witness', Board members do we have on the record the resume of
13 Mr. Williams, any opposition --

14 MR. ZAIDAIN: I actually didn't see it in my, which
15 attachment, what was that attached to, I didn't see it?

16 MR. GELL: His report. It's the last two pages of
17 his report.

18 MR. ZAIDAIN: I'm fine with it, you know, I just
19 wanted to make sure I was looking at the right thing.

20 CHAIRPERSON GRIFFIS: Okay, and as an interesting
21 anecdote, Mr. Williams did serve on the Commission and actually
22 has served on BZA. But I want to draw attention to the fact
23 that, if I'm not mistaken, he mentioned that they would hear four
24 to six cases a month, I believe it was, that was stated in there.

25

1 That's an interesting bench mark, so, there we are.
2 Having hopefully clearing six today, we have changed that
3 dynamic. But, that being said, I have no opposition Mr. Williams
4 being accepted as an expert witness.

5 And I understand he's being proffered as an expert
6 in zoning matters. Is that correct Mr. Gell?

7 MR. GELL: In Zoning and Planning, yes.

8 CHAIRPERSON GRIFFIS: In Zoning and Planning, yes.
9 Very Well. Any opposition? Let me take that as consensus then
10 and we can continue.

11 MR. GELL: I would make the same request for our
12 appraiser, Mr. Lindai Unger and Morris James, he's with Morris
13 James Associates, and he wrote the appraisal report which is also
14 part of your package.

15 I might add he's been used by the District many
16 times, in appraising properties for the District. He has a long
17 record and a distinguished record. He is, by the way, an SRA,
18 no.

19 MR. ZAIDAIN: You're planning on calling him as
20 witness to testify?

21 MR. GELL: We're not calling him, we've submitted
22 his report. His appraisal report, that's all.

23 CHAIRPERSON GRIFFIS: Any questions?

24 MR. ZAIDAIN: In terms of accepting the report and
25 accepting it's findings I don't have a problem with that.

1 CHAIRPERSON GRIFFIS: Well there's a difference is
2 a --

3 MR. ZAIDAIN: What exactly is the issue here.

4 CHAIRPERSON GRIFFIS: There's an importance and a
5 weight given to expert witnesses, which is why those are
6 proffered and clearly it would give greater weight to the
7 submission by Mr. James.

8 He is a certified general real property appraiser
9 and if he's being submitted as an expert witness, as, in
10 appraisal matters, it seems to be in line. It is not something
11 we often have, because in most cases appraisals are not
12 submitted.

13 MR. ZAIDAIN: Yeah, when you said weight though,
14 were you going to discuss whether or not the appraisal's accurate
15 or whether or not it's relevant to the case.

16 CHAIRPERSON GRIFFIS: Well, that's the thing. If
17 we have the ability to question whether it's accurate or not, I'd
18 question it. If we had, I don't necessarily want to get into
19 that.

20 But it would go towards clearly the tests for the
21 variances requested. Corporation Counsel can fill in more on the
22 important or dimension of the witness if you need Mr. Zaidain.

23 MR. ZAIDAIN: Well, I just, if because somebody has
24 submitted an appraisal, and that's their argument for making a
25 variance, that, because we couldn't, we have to accept it as

1 great weight? Is that the issue. I'm just a little confused.
2 I've never been in this situation.

3 CHAIRPERSON GRIFFIS: No. The matter --

4 MR. ZAIDAIN: I mean, I accept the appraisal and
5 it's findings, now whether or not it helps meet the variance
6 tests, that's something for us to deliberate and figure out. I
7 don't think that we can know straight away.

8 CHAIRPERSON GRIFFIS: The question goes not more
9 towards, the case needs to be made with the information provided.
10 So, in terms of the expert witness, it is not towards the weight
11 it does, for the test itself. That still has to be argued for
12 us.

13 MR. ZAIDAIN: Right.

14 CHAIRPERSON GRIFFIS: But rather the weight of the
15 evidence itself that's submitted. Unless you have --

16 MR. ZAIDAIN: I don't have a problem with accepting
17 his evidence.

18 CHAIRPERSON GRIFFIS: Maybe Corporation Counsel has
19 additional words that are more clear.

20 MR. BUFFO: I'm not exactly sure they can be more
21 clear but I mean, I think you would look at it first in terms of
22 it's relevancy, and if indeed it is relevant, then what weight
23 you'll give it.

24 That is, if you believe it's accurate and complete
25 and includes all the things you think are important in such a

1 report. So, it would be sort of a two stage consideration of the
2 report.

3 MR. ETHERLY: And perhaps to help my colleague,
4 think about it in appropriate context, the way which it would fit
5 in terms of that expert designation is that it would give you a
6 certain measure of comfort as you look at the accuracy of the
7 appraisal that's being presented, because you've designated it as
8 an expert product.

9 But I think that the Chairman is absolutely correct
10 in that it would still be entirely within your discretion to
11 determine how that fits into the overall test for the relief
12 that's being requested.

13 MR. ZAIDAIN: That being said, that's fine.

14 CHAIRPERSON GRIFFIS: Okay, any opposition? Very
15 well then. So accepted.

16 MR. GELL: Shall I?

17 CHAIRPERSON GRIFFIS: Yes.

18 MR. GELL: Okay. What we're looking for here is
19 simply a variance from 401.3 on 11 DCMR which requires that for
20 when you convert to a single family house to a multi-family that
21 you have 900 square feet of land for each of the units.

22 What this is is an area variance. I know we talk
23 about conversion which sometimes sounds like a used variance, but
24 this is an area variance which will permit us to have the four
25 units notwithstanding the fact that we do not have the required

1 number of square feet in the lot itself.

2 And we hope through our testimony to show that that
3 will have a serious impact on the neighbors. That it will be, in
4 fact, a unique situation and will also meet the test for
5 practical difficulty.

6 I'm not going to go on. I think it be important
7 really to move to Mr. Washington is going to make a statement.

8 CHAIRPERSON GRIFFIS: Okay. And before he does let
9 me interrupt again. It has been drawn to my attention the fact
10 that the affidavit for posting was filed one day before the
11 hearing. Is, was there a reasoning for that?

12 MR. GELL: I think the holidays intervened. We, we
13 did know that it was five days. We tried very hard to get it in
14 within the five days. I think there was some difficulty in
15 getting a note of Republic.

16 CHAIRPERSON GRIFFIS: I see. But for
17 clarification, it was properly posted, it's just the affidavit's
18 filing was not timely. Is that correct?

19 MR. GELL: That, that's exactly correct.

20 CHAIRPERSON GRIFFIS: Okay. And it was properly
21 posted on the property and in terms of the mailing which is
22 clearly the most important thing for this Board.

23 I don't have any objection to waiving the rules
24 regarding the affidavit filing. Unless anyone else wants to
25 speak to it, then, let us move on. And I think that's the last

1 interruption. Well, we wont say that.

2 MR. GELL: Mr. Washington.

3 MR. WASHINGTON: Thank you and, thank you and good
4 afternoon. My name is Adrian Washington, I'm President of the
5 Neighborhood Development company and I believe Mr. Gell
6 previously introduced my partners in this and other ventures,
7 Karen and Larry Macadue who are sitting here behind us.

8 We formed this company in 1998. However, I, myself
9 have been involved in renovation and other types of development
10 projects in the District for over 15 years. I'm a life long
11 resident of the District.

12 We formed the company about four years ago with
13 specific focus on the Columbia Heights neighborhood. During the
14 last four years we've developed approximately a dozen properties
15 in, in that area and surrounding areas.

16 We have really focused almost extensively on vacant
17 and abandoned properties of what several back on line. Starting
18 with single family properties and now moving up to small multi-
19 family properties.

20 We started from a, a really from a one person
21 operation to a company now that employs about 30 employees. We
22 hire mostly from the surrounding neighborhoods and from an in
23 D.C. in general. And we specialize in properties that are both
24 difficult to acquire and/or to build and this property certainly
25 qualifies on both fronts.

1 The house was originally built in 1910 and was a
2 residence until it's abandoned at least 20 years, from what I can
3 tell from talking to the neighbors in the area. It's on the
4 periphery, towards the periphery of the Columbia Heights
5 neighborhood and it's about two and a half blocks from the
6 Columbia Heights Metro Station.

7 South and east of the property there are row
8 dwellings including some multi family conversions. North of the
9 building and across the street are mixture of ground floor retail
10 and apartments. A block to the west is a Harriet Tubman
11 Elementary School.

12 It's a, it's a neighborhood, it's a, as we all know
13 in Columbia Heights a diverse neighborhood. Homeowners,
14 residents, renters, old and new. An interesting and great place
15 to live, and we've developed several properties nearby, including
16 1038 Lamont Street, about three doors down, a six unit building.

17 The reconstruction of the property and we were, we
18 looked at this, will eliminate certain nonconforming aspects of
19 the current construction, including a nonconforming court. Let
20 me give you just a brief description of how we acquired the
21 property and how we came to where we are today.

22 This is a very long and torturous saga. We
23 purchased, originally purchased rights to the property in a tax
24 sale which took place in July 1999. We purchased a property at a
25 great risk and really without the ability to construct any

1 detailed studies or pro formas.

2 It took until about, geez, February of 2001, over,
3 close to two years, before the, before a tax deed was obtained by
4 us for the property. Then it took about another nine or ten
5 months for the quiet title process and then it took several
6 months for us to get to this point today.

7 So, it's been July 1999, July 2002, three years
8 we've been trying to develop this property. Further complicating
9 the task in July, or in early 2001, DCRA in at least in our view,
10 erroneously placed this property on the condemned property list.

11 I went to the officials concerned, begged and
12 pleaded, told them that we were in a process requiring this
13 property. That we had plans and financing in place to
14 redevelopment, redevelop it. My please were not answered and
15 DCRA showed up one day, without warning, again to demolish it.

16 I did everything I could to try to stop it.
17 Finally, through the intervention of counsel member Jim Graham,
18 we were able to stop the demolition process. Sort of at the
19 worst time, half way through.

20 As a result of their actions, the only usable
21 elements of the property are the front facade, the two side
22 walls, and a portion of the rear wall. This damage that was done
23 through this, what I would describe as a haphazard and dangerous
24 demolition, is that the property was damaged so severely that it,
25 it's nearly impossible to walk into the building safely now.

1 And just the safe removal of the interior damage
2 elements alone, that is just sort of getting it ready for
3 construction, will cost an excess of about \$25, 000.00. And
4 using the old adage that a picture's worth a thousand words, I
5 have here, these were part of your submission, but they were in
6 black and white.

7 So, if I could, I'd like to submit in color, copies
8 to everyone here of what the property looked like before DCRA's
9 demolition, and what it looked like afterwards.

10 In terms of what it will take to complete
11 reconstruction, given that the property was already deteriorated
12 and now the further destruction through the DCRA action. The
13 property will acquire complete reconstruction, which will be
14 really more kin to new construction rehabilitation.

15 Requiring obviously bring all construction elements
16 up to current codes, including new order and source service,
17 sprinklers and other fire safety requirements, enhanced structure
18 elements, full insulation and other costly improvements, which
19 would not be called for in a standard renovation.

20 As you can see from the supplied appraisal by Mr
21 Unger, we wont be able to sell the completed units for a high
22 enough priced warranted expense of reconstruction, unless we can
23 increase the number of housing units to four.

24 Just in, just in gross terms we are looking at a
25 full development cost to redo the building in excess of

1 \$500,000.00. Whether we go with a more standard two unit, which
2 would typically be a single family with a basement rental, or a
3 four unit.

4 But, according to the appraisal, we won't be able
5 to sell it for what it would cost us to build it in, in what,
6 what we can do as a matter of right. And, really, in looking at
7 Mr. Unger's appraisal, I even think he was generous in terms of
8 what we could see them for as a two unit.

9 He estimated that over \$500,000.00. In my
10 experience in the neighborhood, properties at least in that
11 subsection of the neighborhood, no property has approached that
12 selling price. So I would say that the situation's even more
13 dire than that pointed out by Mr. Unger.

14 The likely, so our submission is for a property of
15 four units. Obviously there will concerns about the density of
16 these units. However, our experience in the neighborhood and in
17 also in developing of sort of small condominium buildings such as
18 this is yes, that the density issue will not be an issue.

19 We're looking at developing, basically units that
20 will be one bedroom plus den. The top floor will be a bit
21 higher. And in the two similar buildings we've done in the
22 neighborhood, one a six unit building, one an eleven unit
23 building.

24 Typically these are first time home buyers, younger
25 people. It's almost a one to one ratio of residents to units.

1 We only, in the six unit building we have one apartment where
2 there were two residents. In the eleven unit building we had,
3 again, one apartment where there were two residents.

4 All the rest were singles. And, furthermore, most
5 of those, I won't say most of those, but several of those, were
6 without automobiles. Our property's close to Metro. Again, it's
7 the younger people that like to buy, like to want things like
8 that, so we thought of the density of a four unit building would
9 not be appreciably greater than that of a two unit.

10 Matter of fact, may be a bit smaller, because a
11 larger house could attract one family or multiple families, it
12 could be denser. So, we believe that the density issue is not
13 as, is not a big concern.

14 We spent extensive time listening to support from
15 the neighborhood. In your packages I believe you have letters of
16 support from next door neighbors on either side of the building.

17 Also, we went to a neighborhood group, I believe Mr. Cozad, oh,
18 he's right there, he will testify himself, explain our plans to
19 them, circling the petition, and got signatures from many of the
20 people in the neighborhood.

21 There were a couple of issues that we will work
22 with the neighborhood residents to address. One is the parking
23 issue. As I explained, I think that that will some what
24 ameliorated by the type of buyers that we tend to get in these.
25 Also, that they have pointed out to us issues, areas we can help

1 in terms of, perhaps, working with Metro to move one bus stop to
2 allow more parking.

3 There's also a sort of garage type structure in the
4 middle of the square behind the property that we'd like to work
5 for the residents on, perhaps, freeing up from it's current use,
6 and using it as parking. And also, looking at other things we
7 can do to help.

8 CHAIRPERSON GRIFFIS: What is the current use?

9 MR. WASHINGTON: Current use of the property
10 itself?

11 CHAIRPERSON GRIFFIS: No, of the mid block
12 structure.

13 MR. WASHINGTON: Oh. It seems to be a shade tree
14 garage for what we best can observe.

15 CHAIRPERSON GRIFFIS: Okay. But it's functioning
16 now?

17 MR. WASHINGTON: Yes.

18 CHAIRPERSON GRIFFIS: We wont go into the legally
19 functioning or not, but it's being used? Correct?

20 MR. WASHINGTON: Right.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. WASHINGTON: Okay. Let's see. There's also
23 some discussion about where we'd place the trash. As currently
24 situated, the property is completely landlocked. Again, we want
25 to work very hard with the residents to address this situation.

1 There are a couple of particular objects to look
2 at. One is getting, the lots they are very deep, and by going
3 through one lot we could, again, get access to the alley. So, we
4 wanted to talk with the next door neighbor about perhaps getting
5 some type of easement to go through there.

6 Otherwise, we are committed to any sort of trash
7 solution, sort of using, sort of small super cans, appropriately
8 shielded from the street, picking up once a week, but if
9 necessary picking up more than once a week in order to sort of
10 keep the trash situation down.

11 CHAIRPERSON GRIFFIS: Where is the current city
12 trash pick up?

13 MR. WASHINGTON: Well, the property has been
14 abandoned for so long, I believe the residents, the rest of the
15 residents from the street have up and from our property and to
16 the north, they pick up up front. From our property to the
17 south, I believe they have that small access.

18 CHAIRPERSON GRIFFIS: So those who have alley
19 access put it out back. But there are, there are a stretch of
20 structures, houses, on the block that actually have 11th Street
21 pick up.

22 MR. WASHINGTON: That's correct.

23 CHAIRPERSON GRIFFIS: And what you're talking about
24 is getting some sort of trash removal plan because you will be
25 contracting with a commercial pick up.

1 MR. WASHINGTON: That's correct.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. WASHINGTON: Okay. Thank you.

4 CHAIRPERSON GRIFFIS: Is that it? Yes. Great.
5 First clarification, I am unclear, is this a rental or a condo,
6 proposed?

7 MR. WASHINGTON: Condo.

8 CHAIRPERSON GRIFFIS: Okay. Any other questions
9 from the Board at this time? Okay.

10 MR. GELL: Your honor, Mr. Lindsay Williams is
11 planning expert and I'd like him to give his testimony at this
12 point.

13 CHAIRPERSON GRIFFIS: Good.

14 MR. GELL: Planning and Zoning expert.

15 MR. WILLIAMS: Good afternoon Chairman Griffis, and
16 members of the Board. My name is Lindsay Williams, and several
17 weeks ago I submitted a report, which I presume you have and if
18 you wish, I can simply say you have the report, and I'll answer
19 questions. Or I can start speaking and I can go for as long or
20 as little as you'd like.

21 CHAIRPERSON GRIFFIS: Yes, firstly, we have the
22 report. Secondly, we have all read it. Thirdly, I would suggest
23 that you, just that you summarize as you can going directly to
24 the issues in the tests that are, that are either made or not in
25 this application.

1 MS. WILLIAMS: Well, in, to start off in a summary
2 form, I believe all three tests are matted. What I've tried to
3 do in the report is to kind of bring you there, flying you by a
4 series of maps that sort of zoom down to where the site is
5 located, which is along 11th Street, between Georgia Avenue, or
6 7th at that point in 14th Street.

7 Two and a half blocks away, approximately 1500
8 feet, less than a ten minute walk is that Columbia Heights Metro
9 stop. The area is extremely well served by public
10 transportation. There are, not only the Metro, the Green Line
11 train over the Columbia Heights area, there is also extensive
12 north/south bus service on 11th Street.

13 There is north/south bus service a block or two, in
14 a half, two blocks away on Georgia Avenue 7th, and going to the
15 west, another set of lines on 14th Street. There is significant
16 amount of east/west bus movement, as close as one block away with
17 the H lines, and somewhat south of that, the G lines.

18 All of this is available in a diagram which I would
19 like to submit to the record. These are all referenced in my
20 report with a diagram. Again, makes the point. And I believe
21 this is relevant for you to consider because these are the kinds
22 of units which at the prices they will be going, will be
23 affordable to individuals can get away with not needing a car.

24 This is going to be a neighborhood, if it isn't
25 already where that's becoming a very entertainable idea. You

1 have new economic life coming to Columbia Heights. You have the
2 new Giant complex. People will be able to get high quality
3 groceries in the area, in the very near future.

4 And, they will be able to get to their jobs
5 anywhere in the city by themselves using public transportation.
6 This is not a situation that is going to be one that requires
7 every individual to have a car. Whether the ratio will be that
8 two of these people will and two people wont, we can't tell.

9 This is speculative, but I'm trying to provide a
10 context for why this type of housing may become something that is
11 affordable because people will not need a car. Whether that will
12 be who the ultimate buyers are, we don't know.

13 In any event, the area is zoned R-4. I'm looking
14 at Page Five of my map series. The area's zoned R-4, but
15 directly across the street, it is zoned in a very narrow band of
16 strip commercial and there are in fact stores and other retail
17 operations located directly across the street, as well as to the
18 north where they expand to concur on both sides of 11th Street.

19 The diagram on page five also shows the, begins to
20 give you an idea of the shape of the lot on the square. This
21 square was not subdivided all at once, it was subdivided in a
22 series of different subdivisions that occurred in the 1860's and
23 1870's, with the left side of the square, where the subject
24 property is located being the last area that was subdivided.

25 The original subdivision moved from Sherman Avenue

1 to the west and stopped at the end of the east/west alley there,
2 with house that fronted on both Lamont and Kenyan. And
3 thereafter, the 11th Street properties were added to the square
4 and it was completed, if you will.

5 That may explain the rather quirky alley
6 arrangements that exist through there, including a very strange
7 orphan alley. If you'd turn to page six, you'll see that there's
8 a little stub at the bottom of lot 42 that is shaded, and that
9 indeed is in the city's system of alleys. It goes no where, at
10 this point.

11 CHAIRPERSON GRIFFIS: Does that get cleaned
12 regularly by the city? No.

13 MR. WILLIAMS: When I was there, Mr. Griffis, I was
14 not able to discern the city cleaning crew busy at work.

15 CHAIRPERSON GRIFFIS: Oh. Well, we wont go into
16 that. Let me just understand that you say that that is in fact
17 part of it's exceptional nature, that this was subdivided at
18 different times. Is that going directly to the fact of the
19 uniqueness in terms of it's shape and that it's landlocked
20 position.

21 MR. WILLIAMS: Yes.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. WILLIAMS: There was no option at that point to
24 have an alley system in the back, the way it was subdivided and
25 so these, all the lots, or a great majority of the lots that face

1 onto 11th Street have no alley as such.

2 The row houses that are in the southern half of
3 11th Street, have what appears to be a common walkway that runs
4 along the rear of their properties that provides some of them, I
5 suspect, with some means of getting to the alley, but there is
6 not a formal four foot wide public alley, which I would usually
7 call a trash alley, which is common in places like Capitol Hill.

8 CHAIRPERSON GRIFFIS: But you're saying there's a
9 convenience walkway at the back --

10 MR. WILLIAMS: That walkway extends from lot 55 up
11 to approximately lot 61, 62, something like that. It's a little
12 overgrown, in it's condition. I did not spend a great deal of
13 time evaluating that. Suffice it to say, the applicant's lot,
14 which is lot number 27, I believe it's highlighted in pink on
15 your, has no means, by which it can, on it's own, get to any
16 existing alley system.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. WILLIAMS: And it is impossible for them to
19 proceed out. They can't go to the east, it involves properties
20 that have very deep lot of 42. the lots that face onto the middle
21 of Lamont Street are extraordinarily deep, but they present a
22 barrier to getting to any part of the alley system or the stubs
23 that run north off of the main alley.

24 CHAIRPERSON GRIFFIS: Understood.

25 MR. WILLIAMS: Later, on my report, you'll note on

1 page eight, are excerpts of the comprehensive plan land use map
2 and the policies map, and the point of submitting these was to
3 make sure that you understood that this is an area that is
4 calling for moderate density residential.

5 Moderate density doesn't say this variance must be
6 granted. Moderate density says it is designed to have the kinds
7 of uses that are being included in the R-4 zone. It doesn't say
8 everything that has to be R-4, but it says we're trying to
9 achieve not something that is as low density as a single family
10 housing or as high density as, for example, Foggy Bottom.

11 What I will tell you is that it is my belief that
12 the are, the R-4 zoning is broadly consistent with the
13 comprehensive plan. That's not your job to evaluate, but I just
14 wanted to say that I believe with the use being set out, as it
15 is, in the zone regulations that this type of conversion, as a
16 use.

17 We don't have a use question at all. As Mr. Gell
18 has indicated, what we have is a question that comes up of are we
19 satisfying the ratio? And the answer is no we don't.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. WILLIAMS: We have a lot of X size. We have a
22 structure which has been severely compromised through a series of
23 actions that were not brought about by the owner. This is not a
24 self created hardship. We have a hardship that arises, a
25 difficulty that arises in that the land area which we cannot

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1 expand to the north, or to the east, or to the south, or to the
2 west, is of a certain size.

3 We have a structure, which now presents in the
4 front along 11th Street, it's like a broken tooth for the upper
5 half of the block. Because, to the south, you have a series of
6 two story buildings with turrets. There's a picture of that in
7 my report.

8 To the north you have a series of three story
9 buildings except for the portion where the tooth was knocked out
10 by DCRA several years back, as Mr. Washington was described.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. WILLIAMS: I would characterize the area as one
13 of the many probably in the city which had the historic
14 preservation process been more, brought, had additional
15 resources, it's the kind of area that has integrity, and probably
16 could have been designated as a historic district. It may yet
17 come to that.

18 Right now it isn't. That's shown on page nine of
19 the report.

20 CHAIRPERSON GRIFFIS: You might want to keep that
21 quiet around the neighborhood. Okay.

22 MR. WILLIAMS: I'm not going to the neighborhood,
23 I'm trying to advise the Board that I think we have a case where
24 what the applicant is trying to do, is something which, if the
25 application were denied, I think that the applicant and the owner

1 will have difficulty in making it economically work to restore it
2 to the full three story height.

3 And if you were to come out with a matter of right
4 use, no variance, which is in R-4 is called flat, I think the
5 economics would dictate a basement unit, and then a two story
6 unit thereafter, and that would be it.

7 You wouldn't see anything above what's been knocked
8 down, because it wouldn't be there.

9 CHAIRPERSON GRIFFIS: Well, for total clarification
10 on that, yes. First of all, as you stated, this is a compatible
11 use in an R-4. What you've just stated is that a flat, as a
12 matter of right, is allowable. However, you would still have
13 your lot area restrictions and this lot is not big enough even to
14 accommodate a flat. Is that your understanding?

15 MR. WILLIAMS: Yes.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. WILLIAMS: I'm not sure about that though.

18 CHAIRPERSON GRIFFIS: Well, you're listing it as
19 1637 square feet.

20 MR. WILLIAMS: Yeah, but a flat, I believe is
21 permitted as a matter of right without a 900 foot test in a R-4
22 zone.

23 CHAIRPERSON GRIFFIS: Oh, that's an interesting
24 point. Well, direct reading it's correct. However, the minimum
25 lot size is 1800 which is compatible with the 900.

1 MR. WILLIAMS: If we were trying to create a
2 subdivision, it would not be allowed because it would be not
3 meeting the minimum size.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. WILLIAMS: The use could nevertheless be
6 established. I believe, as, within a lot whose lot size falls
7 short of that, as long as it's a preexisting lot. That's the
8 position I would take.

9 CHAIRPERSON GRIFFIS: Indeed. And I would disagree
10 with you. However we don't need to go totally into that, and I
11 think, it would, the relief would only come as the lot area,
12 minimum lot area, unless there was in fact an old C of O that
13 could be looked at. But that's not what we're dealing with now.
14 So, let's move on.

15 MR. WILLIAMS: Okay, so in pages eleven and
16 thereafter, I try to go through the details of how the situation
17 satisfies the extraordinary and exceptional difficulty test, the
18 slightly irregularly shaped, it's adjacent, it's surrounded by
19 other properties, it can't be expanded in any number of different
20 directions.

21 And, doing a little bit of history work, the lot is
22 although not highly irregular, it is more irregularly shaped than
23 that which is on lot 101, also highlighted on page six of your
24 report, which is a case that the Board heard a good many years
25 ago.

1 The only other case I could find the Board heard on
2 this square at all, in which they granted an area of variance
3 under the same standards that we're considering today.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. WILLIAMS: The strict application to the rules
6 would provide, would result in the practical difficulty of the
7 owner because, as Mr. Washington has stated and as the appraiser
8 has suggested, there are a series of economic and other realities
9 which would make it impossible for them to achieve the
10 wherewithal to make it a viable project.

11 And, thereafter, beginning on Page 13, I try to go
12 through a series of examinations of issues of lack of detriment
13 to the public good, impairment and the like.

14 It is a use that is contemplated within the zone.
15 It would exist within a range of residential uses that includes
16 other apartment buildings that have been there for many, many
17 years in other squares nearby.

18 There is an apartment building in fact, the condo,
19 The Lamont, that Mr. Washington referred to, on the corner.
20 There are, the great mulk bulk of the housing on the square,
21 however, is in the form of single family residential in terms of
22 its classification under the assessment records.

23 I did not knock on doors or check doorbell, you
24 know, the number of doorbells I could find on houses, but in
25 general it is a single family area. And --

1 CHAIRPERSON GRIFFIS: And the housing stock
2 reflects that?

3 MR. WILLIAMS: And the housing stock, and it's
4 mostly smaller houses.

5 CHAIRPERSON GRIFFIS: I see.

6 MR. WILLIAMS: And indeed, one of the questions
7 would be, that I think people might be worried about, is well, is
8 this going to set some kind of a precedent? That somehow anybody
9 that wants to just sort of get another dollar out of their unit
10 can come to you, say well, look, you gave Mr. Washington the
11 relief he sought.

12 I think we have to go back to how did the property
13 come to him, and in what condition. It's a unique situation that
14 was to, that had deteriorated to the point that it did. Not at
15 his hand, but with a little help of, considerable help of mother
16 nature, a lot of other circumstances, and some part of the city
17 which got involved in the way that Mr. Washington described.

18 And, second, there are not too many, I would say
19 there are about four other structures in the immediate vicinity,
20 where they have this three stories on top of an English basement
21 format. Most of the rest of the houses --

22 CHAIRPERSON GRIFFIS: How large is your immediate
23 vicinity?

24 MR. WILLIAMS: On the square.

25 CHAIRPERSON GRIFFIS: I see.

1 MR. WILLIAMS: Okay, good question, I should have
2 said so. The, and were somebody to say that they want to put
3 four units into a house on Lamont Street or on, or Irving or
4 Kenyon or, you'd have to go to look at the character of the
5 building.

6 If it involved putting a massive addition out
7 behind, pushing up and adding new stories that didn't exist, and
8 changing the character of the area, I would say that would be
9 something that I would have a hard time taking on as a
10 professional engagement. Mr. Washington's case, to
11 me, was exactly the kind of thing the Board is here to do. To
12 hear a case such as his pursuant one, because the rule's set up
13 with a 900 foot test, and you're set up to listen to people that
14 have the difficulty that he has, and when something can be done,
15 as it can in his case, in a way that will not create an adversity
16 where the issues that have been identified can be dealt with as
17 they are being dealt with in this case.

18 Then, to me, it provides the opportunity for the
19 Board to grant the relief so that the applicant can achieve the
20 number of units, restore the facade, have a viable project, have
21 people back in the community, in a building, they own and enjoy.

22 That's my case.

23 CHAIRPERSON GRIFFIS: Good. Thank you very much.
24 And it is interesting issue, it terms of precedence, certainly,
25 this Board is well aware of that. However, we are also aware

1 that we look at each individual case for it's own merits and take
2 it for that and deliberate only on that case.

3 And, we do not in fact, that's enough said on that.

4 MR. WILLIAMS: I should have added Mr. Griffis,
5 that at the end of the report, OP I know has put in a report and
6 they've recited a number of issues out of the comp plan that are
7 supportive of this application.

8 At the end of my report I tried to focus more on
9 the parts of the OP, comprehensive plan, that relate to Ward One,
10 and a series of statements are introduced there.

11 Out of the comp plan, which again I believe are
12 broadly supportive of the granting of this. It's a requirement
13 that I understand that the Board look to see if the are issues
14 presented by the comp plan, even though you must be fundamentally
15 faithful to the zoning regulations.

16 CHAIRPERSON GRIFFIS: That's very true.

17 MR. WILLIAMS: And that's fair that I'd offered
18 those comments to you for your consideration.

19 CHAIRPERSON GRIFFIS: Very well. Thank you.
20 Board, questions? Mr. Williams?

21 MR. ZAIDAIN: Just to respond to something you said
22 earlier about setting precedent for anybody who wanted to squeeze
23 an extra dollar out of a property. That would be based on if we
24 were to grant this variance and if we were to grant it based on
25 that assumption that the only reason for their hardship is the

1 economic, which I find to be least compelling.

2 I think what is going to be decided here is these,
3 what you just said, in terms of it's relation to the comp plan
4 and zoning hardship, I think it standing alone, on it's own as an
5 economic hardship, as you know as a planner, is not something
6 that this Board really gets into.

7 It's not highest and best use, it's only use.
8 Well, not only use, but, it's not just the highest and best use
9 of the land, it's hardship under the zoning law. So, in terms of
10 it's setting, precedent nonsense, I don't see it happening, but,
11 just to clarify that.

12 CHAIRPERSON GRIFFIS: Good, and I think also that
13 the question that needs to be answered is, is there a conforming
14 use that is viable?

15 MR. ZAIDAIN: Right. But I think there are some
16 arguments in what you submitted that's much more compelling than
17 the appraisal and such as that. Continue.

18 CHAIRPERSON GRIFFIS: But it does fill out the
19 record. Okay. Mr. Gell.

20 MR. GELL: I would just add a response to what Mr.
21 Zaidain says. I would point to the Tyler case which the court
22 repeals, told this Board that it can indeed look at economic
23 issues. And indeed they cannot grant something simply because
24 the developer --

25 MR. ZAIDAIN: Well, I didn't say I'm not going to

1 look at it. I'm just saying granting a variance solely based on
2 that, which kind of is what you were implying, although, maybe
3 inadvertently. It's not something that I would be comfortable
4 with doing.

5 MR. GELL: Agreed, and we only say that the
6 economic is a part of the problem, but it is a serious part. And
7 does, I think, with the other factors, does make the case for
8 practical difficulty. I'm willing to stop at this point. I had
9 several points, but I think they've all been made by my
10 colleagues.

11 CHAIRPERSON GRIFFIS: Good.

12 MR. GELL: I'm going to let the Board go.

13 CHAIRPERSON GRIFFIS: Okay. And if I'm not
14 mistaken, what I'm hearing in the case that's being made, is
15 actually that because of some of the unique aspects of this one,
16 the beginning of the demolition, the abandonment, and the
17 condition of the property, the economics are a growth out of that
18 condition and I think what Mr. Zaidain is trying to state, has
19 stated, rather, is that the economics are not standing alone.

20 However, they are a piece to the entire puzzle of
21 this application. A quick question Mr. Washington, I noted on
22 the front elevations that were submitted that you are proposing
23 in the reconstruction to match the original materials that, to
24 match or to integrate some of the original materials. Is that
25 correct?

1 MR. WASHINGTON: That's correct. I mean, we just
2 find it's a good, it makes us feel good, and it's also a good
3 business decision to match the character of the neighborhood.
4 So, even though we're not bound by historical review or anything
5 else, we think it's great, it'll look great, and it would be good
6 for the neighborhood and good for us.

7 CHAIRPERSON GRIFFIS: Okay. Two things, I think
8 that's commendable, and I think that's exactly what should
9 happen, in fact, that makes it a stronger application when
10 looking at it in terms of the amount of effort to actually
11 reconstruct the original piece.

12 I am going to mention two things that are outside
13 of our jurisdiction, unless I can in the moments before us, find
14 how I can get there. Outside of our jurisdiction is to the rear
15 elevation. That does not seem to be in great alignment with some
16 of the other buildings, perhaps to the town houses that I'm
17 familiar with.

18 I put that in, just for a note. Secondly, also,
19 egress, I'm certain you have an architect on board from Zahn
20 Designs that is informing you, but I would just note that you
21 might want to make total assuredness, that you don't need two
22 means of egress out of that four unit building.

23 That being said, any other questions at this point?
24 Why don't we move on then --

25 MR. GELL: May I speak? May I just --

1 CHAIRPERSON GRIFFIS: Yeah.

2 MR. GELL: Add one more thing and that is some
3 these issues, we did ask the neighbors how they felt. They've
4 seen the plans. We've not gotten any negative responses at all.

5
6 I understand there's a letter in the file, but all
7 of the neighbors that we've been able to talk, and that came in
8 just yesterday, so we didn't know about it in advance, but all of
9 the neighbors we've talked to do want this project to proceed.

10 And after discussions with them about the parking
11 and trash issues, we think we've satisfied those by the
12 undertakings that Mr. Washington has already indicated that he
13 would do.

14 The ANC was not able, or did not, for what ever
15 reason, take the matter up although they had noticed. However,
16 the single member did write a letter supporting the four units.
17 I think he was under the impression that, let me look at the
18 letter, it's, he's under the impression it was rentals when in
19 fact it is indeed condos.

20 But in terms of the density issue, he seemed very
21 supportive and indicated to us that he knew of no opposition on
22 that square.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. GELL: I think all of the points that have been
25 raised by the letter, the opposition letter, have been responded

1 to, and we'd be glad to respond to any others of those that the
2 Board would like us to. But that concludes our case.

3 CHAIRPERSON GRIFFIS: Good. Mr. Washington, going
4 to that letter from Mr. Herd, who is that ANC-1A single member.
5 He does indicate several items, one being complimentary
6 neighborhood design, which I think is achieved on the front
7 elevation.

8 Security lighting, I'm certain he means by proper
9 residential lighting on that. If that is also your intention on
10 this property, correct?

11 MR. WASHINGTON: Yes.

12 CHAIRPERSON GRIFFIS: And then in terms of the
13 landscaping, from the photographs, I would note that there's not
14 an extensive amount of room to do landscaping in the front of the
15 property. But, do you have any plans developed at all in terms of
16 the trash removal and also accommodating the access, for
17 instance, where would those cans be stored, is there proper room
18 on that site?

19 MR. WASHINGTON: It's a tight space. I have to be
20 honest. We haven't fully studied it. We were hoping for that
21 the rear, the rear exit strategy for the trash, but I believe
22 there's enough room. The way we would accommodate that is to use
23 sort of smaller secure cans and arrange for more frequent pick
24 ups from the front.

25 And again, it's a matter of being a good neighbor,

1 but also good business for us, the people who would buy in a
2 condominium would want that issue resolved as well. So that's
3 how we would handle it.

4 CHAIRPERSON GRIFFIS: Okay. So if, if in fact it
5 was that this was approved and you moved forward, but didn't have
6 exterior access to trash removable, you're willing to provide
7 proper adequate screening and trash containers to the front?

8 MR. WASHINGTON: Yes.

9 CHAIRPERSON GRIFFIS: Okay. Any other questions?
10 Very Well. Let's go to the Office of Planning and, oh, actually,
11 we do have note of exhibit number 24, there is a letter from
12 Counsel member Graham, which was actually noted, and he is
13 indicating his support for approval of this application.

14 MR. GELL: Also, there was a petition with I
15 believe 28 signatures.

16 CHAIRPERSON GRIFFIS: Right. Okay. Good afternoon
17 sir.

18 MR. MCGETTIGAN: Thank you Mr. Chair. My name is
19 David McGettigan, from the Office of Planning. I will be
20 presenting the Office of Planning's report for this case, which
21 was prepared by Mr. John Moore of our office. Mr. Moore's on
22 vacation.

23 First, the Office of Planning finds this to be an
24 exceptional situation, as Mr. Williams discussed, and the
25 application represents an opportunity to restore a deteriorated

1 structure. That is important to maintaining a set of row
2 dwellings in this block, and restoring the use of this vacant
3 building, which has remained vacant for, according to testimony,
4 for twenty years.

5 Second, the Office of Planning finds the
6 exceptional condition of the property presents projectile
7 difficulties to the reasonable rehabilitation of this structure,
8 as presented by the applicant and the appraisal and a
9 construction cost estimate that had been submitted. And the
10 difficulties of the lot configuration as to being landlocked in
11 this situation that has been described.

12 Third, the Office of Planning finds that the
13 requested relief can be granted without substantial detriment to
14 the public good. The Office of Planning notes, in it's report,
15 that the site is well served by Transit, and the four units would
16 not have an adverse impact on transportation in the area,.

17 The rehabilitation of this property will further
18 the well being of this area, and this use and enjoyment of the
19 neighboring properties. Therefore, the Office of Planning
20 recommends approval of the application.

21 CHAIRPERSON GRIFFIS: Thank you very much Mr.
22 McGettigan. Applicant, any cross examination?

23 MR. GELL: No we don't.

24 CHAIRPERSON GRIFFIS: Any questions from the Board
25 members for the Office of Planning? Good. Thank you very much.

1 And we do always appreciate those. Let us, we have mentioned, I
2 just went to the ANC report, or rather, the single member
3 district letter.

4 Obviously it's not given the great weight as a full
5 ANC report would be given, but it is in the file and certainly
6 will go in as part of our deliberation on this. That is all the
7 reports I have listed as submitted, unless others have different
8 notes. If the applicant knows of any other, we can go to
9 testimonies, persons in support of the application at this time.
10 Good afternoon sir.

11 MR. COZAD: Hello. This is my first time here, so
12 you'll have to excuse me.

13 CHAIRPERSON GRIFFIS: Indeed.

14 MR. COZAD: My name is Joseph Cozad. I live at
15 3211 11th Street, five doors down from Mr. Washington proposed
16 conversion. I also represent all the people that live on that
17 street, with the exception of maybe one house, and then several
18 people who live on Kenyan and Lamont.

19 We have an informal group called 11th KLS. We meet
20 about different issues about our block. We started that petition
21 that you have. All of us signed it as well as a few other
22 people. We all firmly support the, Mr. Washington's efforts.

23 We have talked with him about a number of issues we
24 have, trash, parking, and the facade, but we feel confident that
25 he will work with us to resolve those issues. That's really all

1 I have to say.

2 CHAIRPERSON GRIFFIS: Good. Well, thank you very
3 much, and that was painless, right? Okay. We appreciate you
4 coming down and taking the time. First of all, just for
5 clarification, I understand that 11th Street KLS is informal, but
6 how many households does it represent or individuals?
7 Approximately?

8 MR. COZAD: Approximately individual wise, we have
9 about 25 people that come to our meetings. That's about 15, 16
10 houses. As I said, it's all, it is all the houses that are lived
11 in, with the exception of one.

12 CHAIRPERSON GRIFFIS: I see.

13 MR. COZAD: And then about four houses on Kenyan
14 and one on Lamont.

15 CHAIRPERSON GRIFFIS: And how long have you been
16 organized?

17 MR. COZAD: Since April.

18 CHAIRPERSON GRIFFIS: A fresh group. Okay.
19 Questions? I understand that your testimony and circulating this
20 petition is in support of this application, is that, as you
21 stated, you have confidence that any issues that would not be
22 specifically laid out by this Board, or in any approval that
23 might come, would be worked out between you and the developer.
24 Is that correct?

25 MR. COZAD: That's correct.

1 CHAIRPERSON GRIFFIS: Okay. Mr. Gell, cross
2 examination?

3 MR. GELL: No cross examination, Mr. Chairman. We
4 did have another neighbor, Mr. Zapata, who was here earlier and
5 had to leave. However, we have a letter from his mother, who
6 actually owns the house, which has just been passed around.

7 And, I believe that Mr. Cozad was referring to him
8 as well when he talked about the neighbors having that, and
9 agreeing that they wanted to work with the developer.

10 CHAIRPERSON GRIFFIS: Okay. Good. Any other
11 questions for Mr. Cozad? Very Well. Thank you very much. And
12 that notes all the submissions and testimony in support of the
13 application at this time, by my records, is that correct? In
14 which case, we can go to persons in opposition and we do have the
15 submission of yesterday, July 8th, exhibit number 29, and we
16 welcome you this afternoon.

17 MS. MILES: Okay. I am the daughter of Doctor and
18 Mrs. J. O. Miles who owned the property at 3221 11th Street N.W.,
19 a well kept middle class home. My father died in the 1950's. My
20 mother inherited the property. Not inherited the property, she
21 was in charge of the property, at 3221 11th Street.

22 Upon her death, I became the executive and the
23 owner of the properties. Not only did she own property at 3221
24 11th Street, N.W., she owned property in the Columbia Heights
25 area, which were 1368, 1370 Kenyan Street, which were torn down

1 by the D.C. government, and she fought that case, and it was a
2 landmark decision.

3 Ever since that happened, she was catching hell,
4 ever since with other properties that she owned, including the
5 office, which my father had at 2500 Ontario Road, N.W. I
6 elected, with her permission to go and keep that property up
7 because it will be a remembrance to my father who was honored by
8 Congress, and the President of the United States of America.

9 We fought in the Adams Morgan area for justice. We
10 fought for the rights in human and civil, human rights for people
11 to own their properties and live in them. I think the government
12 thought otherwise.

13 After the landmark decision in her favor, there
14 were professional break ins in 3221 11th Street. Destruction of
15 the property continuously. Even in 1971, where there was a
16 suspicious fire that burnt half of the property, I was the one
17 that came in and spent monies to refurbish that property and put
18 it in order to bring back the property to the state in which it
19 was and better.

20 Putting in all kinds of equipment and appliances
21 and everything else to make the home for herself, her family, and
22 her grandchildren who visited the home.

23 In 1975, she was locked out, I was locked out of
24 the house in 1975, which I could not even enter because they had
25 locked the doors. When I tried to come in and later on, or the

1 next day, the equipment that I had in the house, a lot of the
2 things were torn and stolen. Television and everything.

3 I noticed that I had put iron bars on the house
4 after the fires. Iron bars in the front of the house, in the
5 back of the house. It may be very impossible for people to break
6 in just so.

7 They had iron bars over this house which was put
8 in, in good condition, better than good condition, and after that
9 it was constantly broken into. Constantly broken into.
10 Destroyed, the light fixtures, which we had chandeliers in the
11 house, painted rooms in the house, all kinds of amenities in the
12 house of a middle class owner of a property.

13 My mother also had people that visit her home. My
14 father had company all the time, coming in every Sunday, to come
15 into the home and enjoy that home as a home.

16 CHAIRPERSON GRIFFIS: Okay. I may be getting a
17 little confused.

18 MS. MILES: Let me continue.

19 CHAIRPERSON GRIFFIS: I just need to get some
20 clarification from your testimony.

21 MS. MILES: Yes sir.

22 CHAIRPERSON GRIFFIS: Your talking about all that
23 is actually the property that we're discussing today.

24 MS. MILES: Yes, I'm talking about 3221 11th
25 Street, N.W. because I had invested interest in the property

1 after I put thousands and thousands of dollars into bringing it
2 up to par in 1971 and afterwards.

3 CHAIRPERSON GRIFFIS: I understand that. What is
4 your current residence?

5 MS. MILES: I am at, this is another residence at
6 1859 California Street, N.W. which they attempted to do the same
7 thing.

8 CHAIRPERSON GRIFFIS: But, is that where you live?

9 MS. MILES: That's where I live now.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. MILES: And that's where I live now and I had
12 to go through some things like burning, like arson, like all
13 those things. That's too much for the human mind to take. If I
14 wasn't a spiritual person, there would be a lot more to this
15 story then is here today, because of people coming in.

16 The people in the 3200 block of 11th Street are new
17 neighbors. A lot of them have moved out. Some couldn't stand
18 the crime that was going around them. Fire burned to their house
19 next door, and the lady had to leave to go to Philadelphia.

20 They said Sister, which is my nickname, I can't
21 stand anymore, I've been held up twice by a gun, and he owned his
22 house for years and years. That was a middle class neighborhood.

23 You don't say it's abandoned. We were victimized and we need to
24 get away from the term abandoned.

25 CHAIRPERSON GRIFFIS: Okay.

1 MS. MILES: We need to get away from that term. If
2 you were victimized, you have not abandoned anything.

3 CHAIRPERSON GRIFFIS: Okay. And some of this is
4 going to be well without our, well above our jurisdiction, but
5 let me just get clarification. In terms of 1975, your testimony
6 when you were locked out, were you a resident of that structure
7 at the time?

8 MS. MILES: Yes, I would come back and forth, yeah,
9 to my home. And my mother was locked out too.

10 CHAIRPERSON GRIFFIS: I see.

11 MS. MILES: And her grandson, and we couldn't go in
12 the house.

13 CHAIRPERSON GRIFFIS: Okay. Okay.

14 MS. MILES: And even though we had iron bars, you
15 had to go through three doors to get into the entrance of the
16 house.

17 CHAIRPERSON GRIFFIS: Indeed. I understand that.
18 Okay. I think I'm clear.

19 MS. MILES: And I think I'm the only eye witness
20 here, that can speak with truth and sincerity about 3221 11th
21 Street, and about all her properties. This was something that
22 was done and it was maliciously done and they knew what they were
23 doing when they broke in and damaged, not only that house, but
24 other houses as well.

25 CHAIRPERSON GRIFFIS: And who was they?

1 MS. MILES: I would say those who came down to
2 testify against her, those were involved in her trials. I know
3 some of them by names and faces. We had to have court hearings
4 on it. We went up to Appeals Court in regard to her properties
5 that were taken away from her.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. MILES: And my lawyer said to me, when it went
8 to Appeals Court regarding properties on Kenyan Street. He said,
9 you got screwed.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. MILES: I said, I know that. But I wasn't going
12 to take it fair, there. I didn't stop. I took my case to the
13 Supreme Court itself, because the answer they gave was not
14 satisfactory. When they said it wasn't a timely file, because I
15 knew the person who was in the court, who was unimportant to her,
16 and who would not timely file it.

17 CHAIRPERSON GRIFFIS: But that's a separate
18 property.

19 MS. MILES: All right, that's a separate property,
20 but it all impinges on 3221 11th Street because they want to let
21 her know that you don't oppose D.C. government without their come
22 back. That's the whole crux of the matter.

23 CHAIRPERSON GRIFFIS: I see.

24 MS. MILES: They tried to kill her in her own
25 property. And putting that kind of pressure on an elderly

1 person. If age kills one. Certainly she dies in 1979 fighting
2 for her property, wanting to go back into her place. You don't
3 do that to elderly people.

4 I've been fighting regarding elderly people, the
5 homeless people too, because all the cases are not alike. We
6 need to stop this in America. This is supposed to be a land
7 democracy and justice and it's not.

8 When you do this to one person, you do it to all.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. MILES: When you do something to one, like you
11 have terror, and that's a terrorist act. When you terrorist act
12 anywhere, it's a terrorist everywhere.

13 CHAIRPERSON GRIFFIS: Good.

14 MS. MILES: We need to get away from that. We need
15 to stop it. And the D.C. government ought to be ashamed of
16 itself for doing this and terrorizing, Mrs. J.O. Miles and her
17 family in their own property and properties. This is wrong.

18 CHAIRPERSON GRIFFIS: Let me just say, let me, I,
19 first of all, appreciate your passion on this issue and the other
20 properties that were involved in this. I think you've painted a
21 very clear picture.

22 What I need you to do, is to help this Board
23 understand your position as it is directly related to this
24 specific application. Meaning, this Board has no jurisdiction to
25 change the ownership or revisit the past history that has

1 happened in terms of any sort of criminal act --

2 MS. MILES: I'd like to say something to that
3 point. When they file, or send papers, they never address me as
4 the owner. They go back to my deceased father and deceased
5 mother, my father died in the fifties and my mother died in the
6 seventies, why don't they address me as the owner? Why aren't
7 papers sent to me? There are no papers sent to me.

8 CHAIRPERSON GRIFFIS: I need clarification. But
9 who, who sent the papers? Who are you talking about?

10 MS. MILES: D.C. government, any of them. I get it
11 from here say. They don't send me the papers directly because
12 they knew what they have done, and I would oppose it. So, I
13 don't get papers saying each of the owner, I don't get anything
14 saying that I have relevancy to this particular property although
15 I've lived there over 40 years.

16 CHAIRPERSON GRIFFIS: Your specific issue in terms
17 of this application is that you were not notified for the zoning
18 relief that was being --

19 MS. MILES: No. Never. Only thing I got --

20 CHAIRPERSON GRIFFIS: Are you sure what I'm asking
21 you?

22 MS. MILES: The only thing I got in my mailbox, and
23 they tell me I live in the mailbox by the way. I don't live at
24 1859 California Street. This is another kind of thing they are
25 going to do. They're going to play the game again if can get

1 away with it.

2 CHAIRPERSON GRIFFIS: Ma'am. Okay.

3 MS. MILES: They will play the same game again and
4 I'm ready for it.

5 CHAIRPERSON GRIFFIS: We're not in the political
6 field, and I want to you to be as precise, which is important to
7 us so --

8 MS. MILES: I'm trying to be.

9 CHAIRPERSON GRIFFIS: So we can value your
10 testimony. So I'm going to ask you two things. First of all,
11 allow me to continue when I am speaking and I will try not to
12 interrupt you. Secondly, can you clarify the fact that you do
13 live at 1859 California.

14 MS. MILES: That's right. And I also lived at 2500
15 Ontario Road before that, which was my father's office in which
16 we converted to a home. In which they tried to fire bomb there
17 to.

18 CHAIRPERSON GRIFFIS: In terms of other properties,
19 although we would love to spend the rest of the day talking about
20 that and the bigger interest and the problems, we have no control
21 over it. And so, quite frankly, you're wasting your time telling
22 us, because we are out of, we have no control over remedying any
23 situation.

24 So its not valuable for you to discuss that. What I
25 need you to do is summarize your opposition for this particular

1 application. Just to be absolutely clear, we are looking at
2 specific zoning issue attendant to this case, and that is, let me
3 say, generally speaking, to allow four units in this new
4 constructed building.

5 MS. MILES: Okay. I would like to speak to that.
6 First of all, the owner should have been notified and they
7 weren't and they should not send notices to people who are dead.
8 And not to the real owner.

9 And there are issues at fact, that have not been
10 addressed that impinges upon 3221 11th Street, that they've tried
11 to skirt. Those are the kinds of things, as far as the zoning's
12 concern. And that was a three story house with a basement.

13 I don't think they are going, well, they're trying
14 to convert it to condominiums, but they should have it as the
15 same way they had it before, as a leased apartment and the rest
16 of it's a home. It should be a home.

17 Just a house is like 3225, whatever, it's a house
18 that looks just like it, it's a three story building with a
19 basement.

20 CHAIRPERSON GRIFFIS: You have the difficulty first
21 of all that proper notification was not given. Secondly, that it
22 should not be numerous units but rather single family restored.

23 MS. MILES: It should be restored.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. MILES: Because they know what they were doing,

1 and I think it's a bloody shame that it has been done, because
2 that's abuse of power, sir.

3 CHAIRPERSON GRIFFIS: Indeed.

4 MS. MILES: And I'm speaking truth to power. And I
5 know what I'm talking about, because I could not live forty years
6 in a place and not know about it. And my parents have lived in
7 there, and we had a beautiful home. Not a home that's abandoned.
8 So they call abandoned. They're trying to put that same
9 adjective on the house where I live too.

10 CHAIRPERSON GRIFFIS: Indeed.

11 MS. MILES: That's another story.

12 CHAIRPERSON GRIFFIS: But no one's questioning your
13 honesty or integrity on this. And we absolutely appreciate you
14 coming down today.

15 MS. MILES: In fact, that was one of the most
16 beautiful houses on the block if you went inside. Everybody knew
17 that.

18 CHAIRPERSON GRIFFIS: Good. And believe you leave
19 that chair, Mr. Gell has an opportunity to cross examination.
20 Mr. Gell.

21 MR. GELL: Mr. Chairman, I don't want to take a lot
22 of time.

23 CHAIRPERSON GRIFFIS: Good.

24 MR. GELL: In cross examining because I think it's
25 quite clear that what's at issue here is a question of ownership,

1 and not a question of notice. Notices were given to all of the
2 neighbors. Notices are not supposed to be given to the applicant
3 or to the owner of the property and

4 CHAIRPERSON GRIFFIS: Mr. Washington do you want to
5 cross examine or do you want to save that to your closing?

6 MR. WASHINGTON: I think I'm not going to pursue
7 any cross examination at this point because I think Ms. Miles is
8 really made her case as strongly as she possibly could and I
9 don't think it would prevent the Board from taking action.

10 I would say that it should not indeed that her
11 issue, should not in anyway, affect the Board's willingness --

12 CHAIRPERSON GRIFFIS: So you're going to closing or
13 cross examination?

14 MR. WASHINGTON: I guess I'm closing.

15 CHAIRPERSON GRIFFIS: Okay. Thank you very much
16 ma'am. We absolutely appreciate it. As I said, I think the
17 Board clearly is appreciative for your time.

18 MS. MILES: May I ask a question?

19 CHAIRPERSON GRIFFIS: Yes.

20 MS. MILES: The question is, you said that the
21 house was sold as a tax sale in 1999, that's what I heard for how
22 much did it go for, if it were sold in 1999 at a tax sale? I'd
23 like to know that.

24 CHAIRPERSON GRIFFIS: Okay. And in what I'm going
25 to do.

1 MS. MILES: And I want to know on what basis that
2 was done.

3 CHAIRPERSON GRIFFIS: Very well. I think that's an
4 important issue. Let me have you take your seat, and again I
5 appreciate you being here this afternoon. I'm going to state the
6 fact that that has no relevancy to the application before us, but
7 would ask that the applicant make accommodations and perhaps
8 answer that question outside of the hearing room. Mr. Gell,
9 let's turn to you for closing.

10 MR. GELL: I think we can all be sympathetic to the
11 situation of somebody who loses their home in a tax sale
12 situation or a condemnation situation which is apparently what
13 happened here. And I will ask Mr. Washington to speak with Ms.
14 Miles and give her what ever information he can to at least
15 satisfy her as to his understanding about this, about what
16 happened here.

17 And I gather that the Board is not concerned about
18 the notice question that was raised because it was not indeed
19 raised in the context of anything the Board could deal with.

20 CHAIRPERSON GRIFFIS: Just to say the fact that we
21 went through the posting and our records do indicate that it was
22 properly posted and noticed. For our regulations, whether it
23 went to everybody that it should have, in terms of the general
24 opinion of some, we can't address that. But clearly, it's in
25 proper accordance within our regulations.

1 MR. GELL: I would simply reiterate that we have
2 met the burdens placed on us to show that this is indeed a neat
3 property, that there is a practical difficulty and indeed the
4 neighbors are not unduly affected, negatively affected.

5 In fact, quite the contrary. By bringing this
6 property back on line after it's being in a condemned and vacant
7 situation for so many years, is vastly going to improve the
8 situation on the block.

9 The density issues have been spoken to, and we
10 believe those have been dealt with satisfactorily. We hope you'll
11 take into consideration our testimony. I would ask the Board to
12 consider doing a summary order and a bench decision.

13 Not withstanding Ms. Miles was here, but on the
14 grounds that the issues she brought up are really not relevant to
15 the matter before you. And, with that I will conclude and thank
16 you very much.

17 CHAIRPERSON GRIFFIS: Thank you very much. Board
18 members, two things, any other questions to the applicant at this
19 time? Is the Board prepared to go forward today?

20 (All agree.)

21 CHAIRPERSON GRIFFIS: Okay then. Why don't we move
22 forward?

23 MR. ETHERLY: All right, Mr. Chair, I would move,
24 Mr. Chair, for approval of application number 16891 for a
25 variance from the 900 square feet minimum lot area requirements

1 under section 401, for the conversion of a row dwelling to a four
2 unit apartment house at premises 3221 11th Street, N.W. in the R-
3 4 district (Square 2845, Lot 27). And would encourage a second
4 at that motion Mr. Chair.

5 MR. ZAIDAIN: I'll second the motion, Mr. Chair.

6 CHAIRPERSON GRIFFIS: Motion before us Mr. Etherly
7 would you like to speak to it?

8 MR. ETHERLY: I'll speak to the motion very briefly
9 Mr. Chairman. I believe the applicant has put forward a more
10 than satisfactory grounds in support of the variance test. I
11 will note per some of the conversation that Mr. Zaidain engaged
12 in with the applicant that it is not simply the economic grounds
13 here that, that support this case, but when you look at the
14 entire set of circumstances surrounding this matter.

15 Inclusive of some of the economic data that was
16 presented via the appraisal, the situation that resulted from the
17 DCRA acts and of course, the demolition. In addition, of course,
18 to the size of the lot I believe you have a very unique set of
19 circumstances that contributes to an exceptional narrowness,
20 shallowness, and shape of the particular lot.

21 And then of course, with regard to the actual
22 condition of the property, I think perhaps some of the appraisal
23 data that was presented does speak the issue of hardship that
24 could be visited upon the owner of the property.

25 That applicant, with strict application of the

1 zoning regulations, given the nature of the surrounding
2 neighborhood, surrounding properties, it would not appear to be
3 too out of step with the character of the community to entertain
4 a four unit property.

5 And finally, of course, we've heard testimony, both
6 from surrounding neighbors and members of the community in
7 support of this action. Mr. Chair, I believe all those factors
8 combine to reach a satisfactory conclusion with respect to the
9 variance tests in this matter.

10 CHAIRPERSON GRIFFIS: Good. Thank you very much.
11 Yes, I think it was very clear and I think it was well said, the
12 fact that there were extraordinary and exceptional conditions on
13 this.

14 I think the economics actually, I was not convinced
15 of the overall argument then, except for the clarification that
16 was made today, that the balance between reconstructing this for
17 single family to units was cost prohibitive, so that it looked as
18 if it wasn't even viable to do a project.

19 And that, moving from there to the other issues
20 that you've states was a strong application. Any others? Very
21 well. I would ask then, all those in favor of the motion say I.

22 (All approve).

23 And opposed. We can record the vote, when staff is
24 ready.

25 MS. BAILEY: The vote is recorded as 401 to approve

1 the application. Mr. Etherly made the motion. Mr. Zaidain
 2 second. Mr. Griffis and Mr. Parsons in support. Mrs. Renshaw is
 3 not present today. And Mr. Chairman, even though we had some
 4 discussion of opposition, there was no party to this case. I'm
 5 assuming we're doing a summary order?

6 CHAIRPERSON GRIFFIS: That's correct. Good.
 7 Anything else? Then we can adjourn our morning session of nine
 8 July 2002. I would also just note for those in the afternoon,
 9 we're going to take a 25 minute lunch. We have work to do. We
 10 have lunch to eat, and we need to get back here. But we will
 11 keep within that and move directly into the afternoon. We
 12 appreciate everyone's patience clearly a case this morning went
 13 longer than anticipated and that was beyond our control.

14 (Whereupon, the foregoing matter
 15 went off the record at 3:10 p.m. and
 16 went back on the record at 4:00 p.m.)

17

18

19 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

20 4:00 p.m.

21 CHAIRPERSON GRIFFIS: This is what happens when you
 22 eat lunch too fast. I'll get over it in a moment. This is, let
 23 me call to order, the nine July 2002 afternoon public hearing at
 24 the Board of Zoning Adjustment District of Columbia. My name is
 25 Geoff Griffis, Chairperson. Joining me today is Mr. Curtis

1 Etherly, also Mr. Zaidain representing National Capitol Planning
2 Commission and Mr. May representing the Zoning Commission.

3 Copies of today's hearing are available to you,
4 that are located to the, my left at the door. The table next to
5 the door where you entered into this hearing room. I'm going to
6 race down this because one, I can hardly talk. Two, because I
7 think you've all heard this before.

8 But it is important in terms of our opening. But
9 clearly we are being recorded today, so when coming forward we
10 will need you to give your name and address for the record. And
11 also, if you have not submitted witness cards, fill out the
12 witness cards, two copies, and deliver it to the recorder who is
13 sitting to my right.

14 I am actually going to skip the procedures of order
15 because we are midstream on all of these and I will give specific
16 direction as we get into the two cases for this afternoon. And
17 clearly cross examination is permitted by the parties attendant
18 to each of the applications and by the ANC within which the party
19 is, within which the property is located.

20 Just for reclarification, the record will be closed
21 of course at the conclusion of each case, except for any material
22 that we, the Board, ask for and we will specify exactly what we
23 need and when it is to be submitted by the Office of Zoning.

24 And of course, after the record is closed, no other
25 information would be accepted by the Board. The Sunshine Act

1 requires that the public hearing in each case be held in the open
2 and before the public.

3 This Board, however, may consistent with those
4 rules of procedure and the Sunshine Act enter executive session
5 during or after the public hearing on a case for purposes of
6 reviewing the record or deliberating on the case.

7 The decision of Board in these contested cases must
8 be base exclusively on the public record and therefore of course
9 we ask that those present today not engage with members of the
10 Board in conversation so that we don't have any appearance to the
11 contrary.

12 I would ask that everyone turn off beepers and cell
13 phones at this time so as not to disrupt and we will, let me also
14 say everyone patience for the Board today. We do, and take very
15 seriously trying to keep on a schedule, and an expedited
16 schedule.

17 We did obviously have cases this morning that went
18 well into the afternoon and that did become beyond our control.
19 However, we are here now and we will go through the first case of
20 the afternoon. Then we will assess the time left for the second
21 case of the afternoon.

22 I would at this point anticipate going beyond six
23 o'clock and we can establish, depending on parties and applicants
24 schedule, how far beyond we do go with that. Let us take up any
25 preliminary matters.

1 Preliminary matters, of course those are, relate to
2 whether cases will or should be heard today. Such as requests
3 for postponements, continuance or withdrawal with there are
4 proper and adequate notice of the hearing has been given.

5 If you are not prepared to go forward with the case
6 today, or if you believe the Board should not proceed now is the
7 time to raise such a matter. Let me first check with staff to
8 see if there are any preliminary matters.

9 MS. BAILEY: Mr. Chairman, members of the Board,
10 good afternoon and there is one. It concerns to Levine School of
11 Music. An application was withdrawn. We received the
12 correspondence on June 10th. The applicant requested that it be
13 withdrawn.

14 The Board is not required to take any additional
15 action on that application at this time.

16 CHAIRPERSON GRIFFIS: Good. Thank you. Why don't
17 we call the first case, that way then we can get into other
18 preliminary matters as they arise attendant to the first.

19 MS. BAILEY: The first case of the afternoon is
20 application number 16836 of The Washington Home, pursuant to 11
21 DCMR 3104.1, for a special exception for an addition to an
22 existing health care, this is a hospice facility.

23 The applicant is proposing to increase the number
24 of beds from 201 to 205, and to increase the number of parking
25 spaces from 75 to 173. The project is seeking variance relief

1 under section 219, and it's special excepting relief under
2 section 219.

3 It's located in an R-1-B District at premises 3720
4 Upon Street, N.W.(Square 1825, Lot 818). Is everyone associate
5 with this case been sworn in? All of the persons who will be
6 testifying today have you been sworn in?

7 There is a motion, Mr. Chairman, the citizens
8 concerned about The Homes expansion has filed a motion requesting
9 that the Board not bifurcate the public hearing. As you recall,
10 Mr. Chairman, at the last hearing, that was done and there was a
11 request, exhibit number 59 of the record, concerning that.

12 CHAIRPERSON GRIFFIS: Indeed. Thank you. Exhibit
13 number 59, Board members, I think we have had time to read and
14 review it. I will hear comments on it. Also, we have just been
15 handed exhibit number 60, which is a reply to that motion. And I
16 think we can take a moment to review that, of which I have.

17 First of all, let me say in terms of the motion, it
18 was, I think clearly laid out, and clearly discussed, and thought
19 about from the Board, in terms of severing this case bifurcating
20 the case, and hearing just the special exception for the addition
21 this afternoon.

22 And I think there was a great deal of logic to
23 that. First of all, in that, I think part of the decision for it
24 was, well, I made a decision and reasoning for that was that the
25 certificate of need, which sets a fairly stringent time

1 requirement on the applicant for that addition.

2 Secondly, I think it was substantially discussed,
3 and I believe appropriate that the parking and the addition can
4 stand alone. That meaning that the additional, that there would
5 be, there would be a limited or unevidenced impact of parking if
6 we were to approve the addition, or even just hearing it, we can
7 proceed and deliberate substantial without undergoing a full
8 deliberation on the parking.

9 That meaning I think they do stand alone fairly
10 strongly. The motion before us, not to consider this
11 differently, laid out a few points that I had trouble with. First
12 of all, there was a point that stated that the applicant believed
13 that the construction and that the, of the addition and the
14 construction of the parking lot were tied together.

15 It seems to me that it was only logical to bring
16 one applicant and not two separate ones, and if you're doing it
17 the same time it makes, it made more sense then actually tying
18 them together within, with substance.

19 And that's all I need to say on that, although I
20 could speak further. Others? I would therefore be inclined to
21 deny the motion and continue today.

22 MR. ZAIDAIN: I'll second that Mr. Chair.

23 CHAIRPERSON GRIFFIS: Any other further comments?

24 Then, I would --

25 MR. DANZIG: Mr. Chairman, may I make a comment?

1 CHAIRPERSON GRIFFIS: Briefly. You want to just
2 give us your name?

3 MR. DANZIG: Sure, my name is Richard Danzig, 3670
4 Upon Street. I'm submitted a card and I'm here today standing in
5 for John Graham, who had been representing this party's citizens
6 concerned with The Home.

7 I appreciate the concerns you've articulated. I
8 just suggest two things. First, procedurally, it might be good
9 to wait until, to actually collect whatever evidence or testimony
10 and commentary you had planned for today, since everyone's here,
11 and then wait to make a judgement about whether you want to vote
12 on the issue of the addition to the hospice in the light of that
13 evidence.

14 Second, and we would have no objection to that of
15 course.

16 CHAIRPERSON GRIFFIS: And clearly it doesn't
17 preclude us from not making action today.

18 MR. DANZIG: Exactly.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. DANZIG: The second thought that I have is, I
21 think, I, at any rate, am the discussion last time, and perhaps
22 members of this Board, under some misapprehension about the
23 question of the certificate of need, which, as you mentioned was
24 pivotal with regard to this.

25 My understanding certificate of need, is that it

1 terminates in September if construction has not been completed as
2 of that date, and the facility in operation. And that being the
3 case, under any conditions and an extension to the certificate of
4 need will be required.

5 We would not oppose such an extension, and
6 therefore, I think it's an artificial concept about what's
7 causing this. Realistically, the chances that The Home and the
8 neighborhood, between now and September, reach agreement on both
9 parking lot and addition, I think are much greater if both things
10 are on the table and tied.

11 And, as a practical matter, if this Board were to
12 conclude that there should be no addition to the parking, I think
13 it would probably be effective. We would urge that it would be
14 effected in it's judgements and that regard by not allowing an
15 expansion.

16 So, all those things I would just suggest might
17 point in the direction of deferring a decision on this matter.

18 CHAIRPERSON GRIFFIS: Okay, and I appreciate that.

19 First of all, I think in mind of the verse and others can speak
20 to it, and I think they might agree, the fact of looking at four
21 additional units. We did not feel that that would have an impact
22 on the parking.

23 In that, adding four beds, does not increase the
24 staff, as the applicant has stated, and from the testimony that
25 we were given, it would not, with great affect, increase the

1 demand and the driving into and out of the facility.

2 But, let me get clarification on the certificate of
3 need. Is there, can you speak to that, whether that is in fact a
4 hundred percent construction, that needs to be fulfilled by
5 September 20?

6 MR. KEYS: My understand, and again, I did not
7 prosecute the stipulating application, is that we were hopeful of
8 presenting them with a, hopefully, a building permit, indicating
9 that we were cleared to proceed with construction.

10 It is doubtful that construction could have been
11 completed in the one year of the duration of the certificate of
12 need.

13 CHAIRPERSON GRIFFIS: Okay. All right.

14 MR. KEYS: I mean, we are clearly in need of an
15 extension.

16 CHAIRPERSON GRIFFIS: Indeed. I can't stand the
17 fact that here we are anyway, and the Board's prepared to go, so
18 what I'm taking you to say is that, yes, clearly we get through
19 the evidence and hear everything that's going to, so the Board
20 can decide that we cannot.

21 Maybe these are inextricable linked. Maybe, you
22 know, what ever it is that we might find. But, that being said,
23 if there's --

24 MR. KEYS: Mr. Chair, I find that reasoning
25 difficult to follow --

1 CHAIRPERSON GRIFFIS: I probably shouldn't have
2 said it.

3 MR. KEYS: I thought the purpose of today's
4 bifurcation was to, would limit the scope of the evidence being
5 presented. If you're not going to determine bifurcation until
6 after the evidence is presented, you have no basis on which to
7 limit the evidence.

8 CHAIRPERSON GRIFFIS: No, and I'm going to be
9 clear, and I appreciate that, because it's good clarification.
10 We will limiting, in terms of the argument and testimony in cases
11 presented, to the addition. And we will be taking that as an
12 independent special exception.

13 MR. KEYS: Thank you.

14 CHAIRPERSON GRIFFIS: Noting full well that we are
15 following this up with parking is clear in our minds.

16 MR. KEYS: Yes.

17 MR. KOGAN: If I may address the Chair briefly and
18 the Board briefly. Just to go on the record from the ANC-3F
19 point of view. My name is Phillip Kogan. I'm with ANC-3F. I'm
20 representative of the district within which The Home is located.

21 From our point of view, the application itself was
22 written and structured as a single application to accomplish
23 several things. The two principle things I think you addressed.

24 And that's how we dealt with the application at the ANC level.

25 And I think that's what the process requires, is

1 that the application gets made here, comes back to the community
2 for review at the ANC level, and then we, the ANC and the
3 neighbors as well, in this case, bring to the Board our views on
4 the entire project.

5 And, in the interest of fairness, I would ask the
6 Board to take a look at that process, and to consider that that's
7 how we evaluated this application. And that's how we came to our
8 conclusions about this application.

9 There is a disagreement here with the views that
10 you laid out. I think the ANC does see this as a unit, as one
11 project. It's an expansion that does have two dimensions, but it
12 is basically an expansion, in The Homes activity and the way it
13 operates. And I would encourage the Board to --

14 CHAIRPERSON GRIFFIS: But you're not being limited
15 to speaking or making your case against the expansion. I mean,
16 that's what we're here to hear today. Here to hear.

17 MR. KOGAN: But that puts that ANC in a difficult
18 position, because we did look at this application as a unit. And
19 so --

20 CHAIRPERSON GRIFFIS: So, you have difficulty
21 looking at them as two separate pieces?

22 MR. KOGAN: Our commission just did not approach it
23 that way. Correct. And to be able to discern out those, the
24 views of each, I think those put us at a disadvantage.

25 CHAIRPERSON GRIFFIS: How so?

1 MR. KOGAN: Well, simply, because we looked at it
2 as a unit and you were going to look at it as separate pieces,
3 and I think the application itself was presented in a unified
4 form. You've now made this decision that it's going to be
5 separated into two distinct pieces.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. KOGAN: And that's a very different perspective
8 from how we looked at it.

9 CHAIRPERSON GRIFFIS: Indeed. Okay. Next.

10 MR. KEYS: Mr. Chair, just in brief response to
11 that. I would remind the Board that the Advisory Neighborhood
12 Commission approved the certificate of need as a separate and
13 distinct matter in 2001. And, with their support, we submitted
14 the application to shift them.

15 Further, if you look again at the resolution that
16 was passed and adopted by the ANC in this case, there is no
17 objection to the hospice addition. All of the objections run to
18 the impervious surface created by the parking lot, the size of
19 the parking lot, the storm water run off issues, and the tree
20 issues.

21 All which relate to the parking lot. I think they
22 did treat it as two separate issues.

23 CHAIRPERSON GRIFFIS: Okay. Others?

24 MS. PERRY: My name's Karen Perry, also from ANC-
25 3f. When we considered the certificate of need, the four

1 bedding. We agreed on the need for four beds in the city. Not
2 necessarily at this location.

3 And what was before it that night, just to make be
4 clear, was we did not have the plans for the parking lot or that
5 the four beds would be a new facility and new construction. And
6 I just want to add one more thing because I picked this up from
7 the Hospice of Washington, a brochure.

8 This says, the hospice offers patients private and
9 semi-private, a team of physicians, nurses, social workers,
10 volunteers, and others assist the family in providing care to
11 assure those last days, etcetera.

12 So, the question is the intensity of the use, and
13 that's where the parking and the four beds are linked together.
14 More beds, more visitors, more nurses, more the --

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. PERRY: You know, they are linked.

17 CHAIRPERSON GRIFFIS: Understood. Board members?

18 MR. KOGAN: If I could, could I just make a brief
19 statement. I think, just to respond to Mr. Keys. Our resolution
20 on the application, that you're considering today, did talk about
21 the residential character in the neighborhood and the impact that
22 this application, if approved, would have on the residential
23 character of the neighborhood.

24 So, I think the ANC's consideration did go beyond
25 just parking. We did look at the entire project and we did look

1 at those impacts in terms of the zoning.

2 CHAIRPERSON GRIFFIS: Okay. Others?

3 MR. ZAIDAIN: Yeah, just to talk about the issue
4 that's going on. It was my understanding that this is a four bed
5 addition, and there was going to be no increase of staff and
6 things such as that. You're basically just adding four more beds
7 for four more patients.

8 So, in terms of campaigning it as an increase and
9 intensity, seems to me it's kind of a strong argument to make.

10 MR. DANZIG: It would be excellent to hear some
11 representation from The Home in that regard. It's pretty clear
12 that four beds requires round the clock nursing staff.

13 MR. KEYS: It's on the record. I think you can
14 look at the testimony of Ms. O'Connor. The reason that we're
15 adding the four beds, and if you look at the plan that's in the
16 record, we are literally bringing in four patient rooms and a
17 hallway.

18 There are no other facilities being incorporated in
19 support of that. That's because the infer structure is already
20 there.

21 MR. ZAIDAIN: Well, I don't think facility is the
22 issue, I think it's a support staff to support the four beds.

23 MR. KEYS: And we felt there were nursing
24 efficiencies that would allow care to be spread without an impact
25 on employment.

1 MR. ZAIDAIN: Okay, so it's your statement that
2 this will not generate more employment?

3 MR. KEYS: That's correct. I think --

4 MR. DANZIG: Or more visitors, or more --

5 MR. KEYS: Well, obviously there will be more
6 visitors. I mean, if there are more patients there will be more
7 visitors because of the need for medical professionals to come.
8 And people want to be with their family members in hospice.

9 CHAIRPERSON GRIFFIS: Okay. It sounds like we're
10 starting to argue it, which is an excellent point, but we need to
11 get there first. Board members, are we prepared to move?

12 There's a motion on the table, we've heard from the
13 parties in question and applicant. I will take further
14 discussion on it. We can table the motion on the, our motion on
15 the motion not to --

16 MR. ZAIDAIN: Mr. Chair, I don't think we should
17 table it, because I think that's just going to lead --

18 CHAIRPERSON GRIFFIS: Indeed.

19 MR. ZAIDAIN: Everybody into arguing on whether or
20 not we should approve it to this hearing. I think that we need
21 to, you know, I think, I find that the Board keeps getting itself
22 into position of trying to accommodate everybody's schedules and
23 things such as that --

24 CHAIRPERSON GRIFFIS: We're much too nice.

25 MR. ZAIDAIN: With all due respect Mr. Chair, I

1 think you may be. But I think at this point, in terms of the
2 intensity in my mind, of what's going on, with the addition of
3 four beds, we can bifurcate it and perceive it from there. I'd
4 be inclined to deny the motion to go.

5 MR. ETHERLY: Mr. Chair, if I may add, I would also
6 like to associate myself with Mr. Zaidain's remarks. We've tried
7 at every turn, I think to accommodate at alternate instances,
8 both parties.

9 And, it's a difficult tight rope to walk. One in
10 which I don't think everyone is going to be pleased with the
11 outcome. I think you hit it right on the head Mr. Chairman. I
12 think this case can indeed be bifurcated and adjudicated in that
13 manner without creating any harm. Actually, I won't even qualify
14 that, any harm to either party.

15 I understand Mr. Kogan and Ms. Perry's comments
16 about the manner in which the ANC prepared for this case, but I
17 just haven't heard anything to, to convince me that you're going
18 to be hindered in any significant way, by the bifurcation of this
19 issue.

20 Once again, I understand and I heard the manner in
21 which the ANC prepared for this case, but I think you can move
22 forward. Through the discussion and dialogue and cross
23 examination that we've had to date, the ANC and other party
24 representatives have demonstrated, I think, an amazing grasp of
25 the issues that are in this case, complex as they are, and I

1 think we can move forward.

2 Mr. Danzig, your suggestion was an interesting one
3 that peaked my curiosity for a moment, but if anything, I've
4 tried to be very consistent along the lines of judicial
5 administration and efficiency here. And I think in balancing the
6 needs of the applicant, and also in balancing the need of the
7 other parties to get some resolution on this case.

8 I think we need to, we need to, trundle forward,
9 Mr. Chair, so I'd be prepared to vote in favor of denying the
10 motion.

11 MR. ZAIDAIN: I'd like to add one thing. There's
12 was some speculation that by bifurcating this it would legally
13 bind the Board's hands in some shape to approving the parking
14 extension or something like that.

15 Court Counsel can correct me if I'm wrong, but
16 there was zoning requirement per say, that says we have to grant
17 additional parking in order to accommodate this addition, if we
18 were to even grant the addition. So, I think that are hands are
19 not tied here.

20 MR. BUFFO: Yeah, you just have to find that there
21 would not be an adverse effect on parking. Not in the
22 considerations for expansion of the hospital.

23 CHAIRPERSON GRIFFIS: Good. Others?

24 MR. ETHERLY: If I could, Mr. Chair, just to pick
25 up what Mr. Zaidain pointed out. I think that's a very good

1 point that probably is the unspoken thing here. We're not
2 talking about a fit of comp leave. There's one outcome on this
3 particular issue, versus what's going to be considered at our
4 next session in September.

5 And I think that's a very important thing to put on
6 the record and say very clearly, that one outcome does not
7 necessarily dictate another one.

8 CHAIRPERSON GRIFFIS: I take that as a consensus
9 then?

10 MR. MAY: Yeah, I'm all talked out.

11 CHAIRPERSON GRIFFIS: Good, then --

12 MS. BAILEY: Mr. Chairman, excuse me, who seconded
13 that motion to deny the, to deny?

14 MR. ZAIDAIN: I did.

15 MS. BAILEY: Oh. Mr May?

16 MR. ZAIDAIN: No. Me.

17 CHAIRPERSON GRIFFIS: Okay. Then, let us start up
18 with this. I think we have --

19 MR. ZAIDAIN: Are we doing that by consensus?

20 CHAIRPERSON GRIFFIS: We are.

21 MR. ZAIDAIN: Okay.

22 MR. MAY: We need to have a vote, I think.

23 CHAIRPERSON GRIFFIS: Well, I polled and got a
24 consensus on that, but may I ask for all those in favor of the
25 motion to deny the motion concede by saying I.

1 (All approve.)

2 And opposed? All right. Now, let us establish
3 where we are, and how we're going to accomplish this. It would
4 be my understanding that we would begin with, well, let me run
5 this through.

6 I am assuming that the case presented is finished
7 on this regarding the addition. And then we could move to, if
8 there were annotated reports from the government agencies to
9 that. Then we could go towards the parties and persons in
10 support, and then parties or persons in opposition.

11 And then we would have closing. Is that your
12 understanding, from the applicant.

13 MR. KEYS: That's correct, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Okay. Is that the parties
15 understandings?

16 MR. DANZIG: Yes, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Okay. Good. In which case,
18 let's start then with the office of planning.

19 MS. THOMAS: Good afternoon Mr. Chairman, members
20 of the Board. I'm Karen Thomas, providing OP's report
21 considering the applicant's request for a one story addition to
22 it's existent facility. OP reviewed the application with respect
23 to the one story addition, noting the following.

24 The proposed addition will project twelve feet
25 beyond the existing building line, in the direction of Upon

1 Street. It was designed to be architecturally unobtrusive to the
2 main building. The addition seems to be a minimum enlargement to
3 the existing structure, increasing the first floor area by 3.8
4 percent and the full building area by 1.6 percent.

5 The proposal is within the height structure
6 required by the R-1-B zone at forty feet. In addition, the
7 applicant has obtained a certificate of need, issued by the state
8 department of health grant and commission for the four bed
9 increase to the address the additional demand for it's services.

10 The generalized land use map designates the
11 property as institutional. The addition is not expected to
12 operate in a different manner from the facility, and the
13 applicant does not anticipate a substantial increase in the
14 number of visitors or employees.

15 Previous d-dot report indicated that there's no
16 objection to the addition and OP believes that there should be no
17 appreciable increase in traffic or noise due to this addition.
18 The addition then preserves the intent of the zoning regulations
19 and map, and should not adversely affect the neighboring
20 properties.

21 OP believes it poses no additional burden to the
22 surrounding neighborhood and Ward three in general. Thank you.

23 CHAIRPERSON GRIFFIS: Thank you very much.
24 Questions of Office of Planning by the applicant?

25 MR. KEYS: I have none Mr. Chair.

1 CHAIRPERSON GRIFFIS: Parties have cross
2 examination of Office of Planning?

3 MR. DANZIG: Just one question.

4 CHAIRPERSON GRIFFIS: Sure.

5 MR. DANZIG: Ms. Thomas, substantial, you do not
6 expect a substantial increase in visitors or employees. Did you
7 estimate the increase in visitors and employees from this
8 addition?

9 MS. THOMAS: I'm basing it on the testimony
10 provided by the applicant. Hold on, one second. In section ten
11 of the applicant's report, submission, rather, page six, it said
12 that the in-patient services can also be provided more cost
13 efficiently since H.O.W. can operate an additional four beds
14 through the use of one additional RN post shift. And we did not
15 determine that to be a substantial increase.

16 MR. DANZIG: And the addition in traffic and other
17 respects, visitors.

18 MR. STEINGASSER: I'm Jennifer Steingasser, also
19 with the Office of Planning. We did not address traffic as, as
20 the traffic revolved primarily around the parking issue.

21 CHAIRPERSON GRIFFIS: I think what we're going to
22 need to do is just limit the answer to the question to the impact
23 of the four units as it goes to any sort of tending tour and
24 adverse effect.

25 MR. STEINGASSER: We did not anticipate any

1 traffic, any significant traffic to be generated by the four
2 rooms.

3 MR. DANZIG: Are you, I'm staying where you are Mr.
4 Chairman I think. Are you aware of the parking study done by the
5 applicant?

6 MR. STEINGASSER: The parking issue?

7 MR. DANZIG: Yes. How many spaces did they
8 allocate they request additionally as a result of this.

9 MR. STEINGASSER: Again, I believe parking was not
10 what we were to address.

11 CHAIRPERSON GRIFFIS: Right. Indeed. I think that
12 direct question actually goes beyond, just barely, but it goes
13 beyond, and this is the issue. Frankly, what we're, for
14 clarification, when we go to the parking lot, my anticipation, I
15 should have said it from the beginning was, I don't think this
16 Board will hear an argument based on need for increased parking
17 for the surface lot, dependant on the addition of the building.

18 Meaning, if the addition was granted, that does
19 not, in any way then reinforce an argument that there's required
20 additional parking.

21 MR. DANZIG: I understand Mr. Chairman and I very
22 much appreciate what you're saying. And I agree that I
23 understand that I should not be questioning about the
24 construction of a lot and so forth, but the issue that the Board
25 needs to consider, and by it's very narrow ruling, is whether the

1 increment of four additional beds has substantial impact on the
2 community.

3 And, a part of that is, does it generate more
4 traffic, and if so, how much?

5 CHAIRPERSON GRIFFIS: Right.

6 MR. DANZIG: I think we're all agreed it generates
7 more traffic.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. DANZIG: The Home actually has made an estimate
10 of the increment in traffic, inferentially when it's parking
11 expert calculates the additional number of spaces that it thinks
12 it needs.

13 And I'm just trying to illuminate that point for
14 you all.

15 CHAIRPERSON GRIFFIS: Well, two points, and I think
16 you can try and eliminate that in your case. And secondly, I'm
17 sure that, well, OP, can answer the question. Whether they
18 looked at the directly in relation to the addition or whether
19 they're actually able to answer that question.

20 MS. THOMAS: Mr. Chair, we, to address that issue,
21 we based our initial report on d-dot's no objection to the
22 addition, March 15th. I mean, they didn't specifically address
23 the addition per say, their whole issue was for the parking lot.
24 They had no objection to the addition, per say.

25 MR. DANZIG: Mr. Chairman, I'll be quite content,

1 if I can just to recall to the Board, a section of the parking
2 report. If I may, I'll just read two sentences here. First,
3 that the calculation is that there's a ration of one employee to
4 one bed required additionally.

5 This is from page nine of the parking analysis.
6 And second, that the addition of four beds will require four
7 parking spaces to meet the parking need for this expansion.
8 Further, a factor of ten percent has been added to allow for
9 efficiency, therefore, their estimate, The Home's estimate is
10 that this addition would require four and a half additional
11 parking spaces.

12 And I just call that to the attention of the Office
13 of Planning and the Board. Thank you.

14 CHAIRPERSON GRIFFIS: Indeed. and we appreciate
15 that and that's not something that we were unaware of, and I
16 think that is something that we have to factor into whether we
17 believe that calculation or not.

18 Clearly, in this special exception and in the
19 parking special exception, the difficulty here, actually, the
20 unknown, we don't have an actual calculation, by the regulations,
21 stating, well yes, each of these beds requires a parking space.

22 If it was that clear, I think we'd have great
23 difficulty in looking at one independent of the other. That, in
24 fact, that the parking, actually, has established by this Board.

25 I think we have the capability of deliberating on what the

1 applicant states.

2 And then, taking in a larger context, the future,
3 special exception, and now the instant special exception. But I
4 --

5 MR. DANZIG: If I may say so, I follow the logic
6 completely and understand and yes we can deal with the parking in
7 September given your ruling, in just the way you described.

8 The only observation that I'm making is that in
9 fact, the creation of an addition does, by The Home's
10 calculations, increase the amount of traffic and the demand for
11 parking and therefore, my only suggestion to the Board would be,
12 if you could, as apparently you will, take account of that in
13 considering this.

14 And it goes beyond what the Office of Planning has
15 said. Thank you.

16 CHAIRPERSON GRIFFIS: Right. And I appreciate
17 that. That certainly will go into our deliberation. Any other
18 questions of Office of Planning? Clarifications of the ANC?

19 MS. PERRY: Hi. I'm Karen Perry from ANC-3f. You
20 quoted from the comp generalized land use map of the district,
21 but isn't it true that the Ward Three plan says that there are
22 already a number of institutions in Ward Three? And that any
23 expansion must be carefully controlled and limited and encouraged
24 to go back to residential uses?

25 MR. STEINGASSER: I believe you are correct. It

1 does say that they should be carefully controlled and that their
2 growth carefully guided.

3 MS. PERRY: Since the underlying zoning of this
4 area is R-1-B, what would the density be if it was developed for
5 homes, single family houses?

6 CHAIRPERSON GRIFFIS: You mean the small addition,
7 or the entire complex?

8 MS. PERRY: The entire complex or the four beds,
9 this is way beyond what would be.

10 MR. STEINGASSER: Right off the top of my head I
11 couldn't say. There's a minimum lot size in the R-1-B district
12 of a five thousand square foot lot.

13 CHAIRPERSON GRIFFIS: Actually, let me clarify what
14 I was going to say.

15 MR. STEINGASSER: Okay.

16 CHAIRPERSON GRIFFIS: That's well beyond this
17 application. I mean, we're looking at the specific special
18 exception and what you're bringing in is asking OP to come out,
19 and my understanding is speculation of if the entire institution
20 went away.

21 MS. PERRY: Not necessarily, but just even the four
22 beds. I mean, it's just.

23 CHAIRPERSON GRIFFIS: There it is, your answer.
24 Anything else? Okay. Then let us go to, we do have the,
25 attached to your report was the d-dot report. Did you just want

1 to summarize that?

2 MR. STEINGASSER: Yes sir, and OP considers this
3 report heavily when we did make our recommendation. The, it was
4 issued by Ken Layden, signed by Rick Rydrich, for Ken Layden,
5 Associate Director of Transportation Planning, Transportation
6 Policy and Planning Administration District Department of
7 Transportation.

8 In conclusion, the report is filed on the record.
9 It was issued March 15th and it reads in conclusion that d-dot
10 has no objection to the proposal. The second paragraph
11 specifically addresses their understanding of the proposed
12 construction of a four room addition to the existing structure.

13 CHAIRPERSON GRIFFIS: Questions of the Board? The
14 applicant have any questions of the Office of Planning?

15 MR. KEYS: No.

16 CHAIRPERSON GRIFFIS: Parties?

17 MR. DANZIG: Mr. Chairman, I need some guidance
18 from you here if I can.

19 CHAIRPERSON GRIFFIS: Have you cross examine in a
20 memo?

21 MR. DANZIG: Well, there's that, but more
22 fundamentally, essentially, the underlying document is all about
23 parking.

24 CHAIRPERSON GRIFFIS: Indeed.

25 MR. DANZIG: I have a number of questions about it.

1 My suggestion, if it would be agreeable to the Board, would be
2 that if the Board could call a parking office witness in
3 September, I will refrain from any questions now, and then
4 perhaps we could actually talk to a live person and we could then
5 get into the parking issue which we would like to then.

6 CHAIRPERSON GRIFFIS: I think that's an excellent
7 idea, and actually appropriate and, if I'm not mistaken, that was
8 our anticipation, that we would have a d-dot representative here
9 for the September hearing, which is clearly what their report's
10 going to.

11 And I think what Office of Planning has stated is
12 that they did look at the addition and saw fit that it was the
13 larger expansion of the parking that was important.

14 So, I have no problem with that. In fact, I would
15 assume that's going to happen. ANC have any? Yes? You don't
16 have cross examination? You have questions?

17 MR. ZAIDAIN: I think I can clarify Mr. Chairman.
18 I think the ANC's come up to testify on the merits and therefore
19 you want that --

20 CHAIRPERSON GRIFFIS: Indeed.

21 MR. KOGAN: I thought it was, you were calling for
22 my report.

23 CHAIRPERSON GRIFFIS: Okay, good. And this is your
24 testimony then? Okay, well, let's pass that out. We'll have it
25 in front of us, but let's continue on then. We do have, if

1 there's no other questions off the Planning or d-dot, we will
2 thank them, but not excuse them, and move to exhibit twelve,
3 which is Department of Health.

4 Well actually that goes to the certificate of need,
5 actually. I'm not sure what more we need to address on that. Do
6 the parties all have copies of the entire document and the
7 exhibit?

8 MR. DANZIG: I'm sorry Mr. Chairman, I don't, but I
9 think I'm willing to not press the, save some time of the Board
10 here, and not press these points.

11 CHAIRPERSON GRIFFIS: Okay. ANC feel similarly?

12 MR. KOGAN: Yes Mr. Chairman.

13 CHAIRPERSON GRIFFIS: Is there any issues, points,
14 or clarification the applicant wants to make? No? Very well.
15 Then we can move again, quickly on. Are there persons in support
16 to give testimony today? Persons in support.

17 MR. KOGAN: If I may, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: You want to testify in
19 support?

20 MR. KOGAN: As a matter of procedure, I thought the
21 ANC was the government agency that followed the Office of
22 Planning.

23 CHAIRPERSON GRIFFIS: You know, I'm terribly sorry.
24 You're absolutely right, and I appreciate that clarification.
25 Let us do that. That makes perfect sense. In which case, you're

1 welcome to begin.

2 MR. KOGAN: Thank you, Mr. Chairman. I've prepared
3 a brief statement that I'll go through with the Board. On July
4 30th 2001, representatives of The Washington Home presented to
5 ANC-3f information regarding their application for a certificate
6 of need for four additional hospice beds.

7 At this meeting, as Mr. Keys mentioned earlier,
8 ANC-3f voted to support The Home's application for the
9 certificate of need. This vote, by our ANC was based in part on
10 the fact that The Home provides valuable and vital health care
11 services within our community.

12 Our ANC continues to support The Home for the
13 quality of care that it offers. However, ANC's vote on July 30th
14 2001 endorsed only the certificate of need and no position was
15 taken at that time on the application that's currently before
16 this Board.

17 It was not until nearly one year later, on June
18 17th 2002, that ANC-3f took up the issue of construction of an
19 addition and expansion of the parking lot proposed in application
20 16836. At the June 2002 meeting, after hearing presentations
21 from both The Home and from the residential neighbors of The
22 Home, ANC-3f voted unanimously to recommend to the BZA, that it
23 not approve The Home's application for special exception.

24 In reporting to the Board today on these two votes,
25 involving The Home's application, I'll tell you that, as I have

1 earlier, that this case presents some very difficult issues for
2 our ANC and our community.

3 Among the most important is the issue of
4 institutional expansion. We know that this is an issue with
5 which this Board has struggled as well. And while we support The
6 Home for the quality of care it provides, we're very concerned
7 about it's encroachment into the surrounding residential
8 neighborhood, and the impacts of it's activities on the
9 neighborhood.

10 In particular, it's represented by the proposal
11 made in this application. The picture we see is one of an
12 institutional neighbor with an agenda for growth and expansion.
13 In 1985 The Home requested and received a special exception,
14 enabling it to replace an existing facility with a new facility
15 that would house 189 beds.

16 In 1997, The Home came back to the BZA to request
17 and receive approval for an additional twelve beds for the same
18 facility. More recently, The Home acquired Med Stars Visiting
19 Nurse Association Hospice Program and organized the Palliative
20 Care Institute
21 under it's sponsorship.

22 From the perspective of neighbors living in the
23 vicinity of the home, this degree of growth and expansion has
24 raised concern about The Home's future intentions in the
25 neighborhood. On this point, we feel The Home has not been very

1 forthcoming.

2 At the July 2001 meeting, when we considered the
3 certificate of need, neighbors expressed concern about this
4 picture of incremental growth, which I've just portrayed for you.

5 And The Home's representatives were asked to describe their long
6 term strategic plans for their facility, for their institution,
7 so that the neighbors could better understand what that future
8 presence would look like to them and how it might impact them.

9 The Home's CEO Len O'Connor, responded at that
10 time, that The Home's strategic plan was to provide four
11 additional hospice beds. That these four beds represented The
12 Home's long term strategic goals.

13 This answer, put quite simply was not satisfactory, in terms of
14 The Home's recent pattern of growth and expansion.

15 And this answer points to the core of the problem
16 for the community. As I indicated, our community wants The Home
17 to be able to continue to do what it does well, deliver quality
18 health care services.

19 What our community does not want to see, continuing
20 incremental growth, that eats away at the neighborhoods
21 residential character. And that's something that we see in this
22 application. We need to know, we'd like to know that our
23 neighborhood quality of life will not decline in order that The
24 Home may continue to grow.

25 And we need to know that The Home will work to

1 maintain the balance between institutional and residential uses.

2 So far there is insufficient evidence to support such a
3 conclusion. It appears that The Home's principal agenda is
4 expansion, even if this means further encroachment on the
5 surrounding residential neighborhood.

6 And again, I point to the application that we're
7 considering today. In 1981, a comprehensive zoning text
8 amendment case established many of the zoning rules which govern
9 community based residential facilities.

10 These rules opened the single family residential
11 zones R-1 to R-3, to institutions such as The Washington Home.
12 However, the underlying principles for the text amendment were
13 that the size and the density of these community based
14 residential facilities should be generally consistent with the
15 size and density permitted in the residential zone districts.

16 The facilities should be dispersed as equally as
17 possible around the city, and that smaller family size facility
18 should be encouraged so as to lessen neighborhood impacts and
19 provide a home-like environment for residents as an alternative
20 to an institutional setting.

21 The kind of expansion proposed in application 16836
22 is not consistent with the underlying R-1-B zoning. Those
23 conclude my formal remarks and I thank the Board for the
24 opportunity to address them today.

25 CHAIRPERSON GRIFFIS: Thank you very much. Board

1 members, questions?

2 MR. ZAIDAIN: Mr. Chair, I have a question.

3 CHAIRPERSON GRIFFIS: Yeah.

4 MR. ZAIDAIN: You said that in July 30, 2001, the
5 ANC voted to support The Home's application for four beds.

6 MR. KOGAN: Correct.

7 MR. ZAIDAIN: Four additional hospice beds.

8 MR. KOGAN: We voted to support the certificate of
9 need application that was being made to the department of health.

10 MR. ZAIDAIN: Which was four additional hospice
11 beds?

12 MR. KOGAN: Which indicated that there was a need,
13 in this market, in this health care market, for four additional
14 hospice beds.

15 MR. ZAIDAIN: Okay, so, you've supported the
16 certificate of the need, but you don't support the expansion.

17 MR. KOGAN: Let me explain, Mr. Zaidain.

18 MR. ZAIDAIN: I mean, it's confusing.

19 MR. KOGAN: Yeah, in the July 30, in the July 2001
20 meeting, the issue of facilities, construction, parking lot and
21 all of those other issues associated with this application were
22 not in front of the ANC.

23 What came to the ANC was a certificate of need that
24 gets presented to the Department of Health, which is a study of
25 the health care market. I think it takes in the surrounding

1 counties, Prince George's, Montgomery, Alexandria, and Arlington.

2 It just looks at what services are being provided
3 for hospice care what the existing need is and The Home made a
4 case that there was need for four more beds. At that time we
5 didn't consider any of the other implications. That information
6 was not provided. And so we were --

7 MR. ZAIDAIN: Implications like the things we've
8 been talking about, parking and landscaping and all that kind of
9 stuff. There's no plan before you. There was a certificate of
10 need and that was the only issue. Is that it?

11 MR. KOGAN: That is correct.

12 MR. ZAIDAIN: So at that time you supported it, and
13 now, in June, you don't support it because of those issues. I
14 don't want to put words in your mouth, I'm just trying to
15 understand.

16 MR. KOGAN: Please don't.

17 MR. ZAIDAIN: Yeah.

18 MR. KOGAN: I think when you look at our resolution
19 of June of 2002 and you look at the report that forwarded the
20 resolution, I think what we saw was a plan for a facility that
21 was oversized for the neighborhood.

22 And again, as we discussed earlier, that plan had
23 attached to it two principle components. A four bed addition and
24 a substantial increase in the size of the parking lot.

25 MR. ZAIDAIN: Sure.

1 MR. KOGAN: More than doubling of the parking lot.

2 And when we took a look at that plan as a whole, we felt that
3 that was not compatible with the existing zoning or with the
4 existing neighborhood, the residential character of the existing
5 neighborhood.

6 MR. ZAIDAIN: Can I just ask a simple question?

7 MR. KOGAN: Yeah.

8 MR. ZAIDAIN: So, in July, when the certificate of
9 need was before you for four additional beds, it was no
10 discussion of where those beds might go. It's just that, yeah we
11 agree that there may be a need --

12 MR. KOGAN: Yeah, no, I think The Home made clear
13 that they had plans to expand. But they also made clear that at
14 that point in time, their request was simply for ANC support on
15 the certificate of need and that's how we viewed it. We did
16 separate the two.

17 MR. ZAIDAIN: Okay.

18 MR. KOGAN: I think that was very clear in our
19 proceedings and I think we could probably go back to the minutes
20 and --

21 MR. ZAIDAIN: No, that's All right. Okay, thank
22 you.

23 CHAIRPERSON GRIFFIS: But were there other
24 facilities that you could have assumed that these expansion plans
25 were made for?

1 MR. KOGAN: Yeah, I think a reasonable person could
2 see that down the road at some point, and I think again, The Home
3 made clear that they had those ideas in mind. But that's not
4 what we were being asked to make a decision on.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. KOGAN: And I think that's where some of our
7 difficulty is with the bifurcation, is that on the one hand, we
8 have a very high regard for The Home and what it does and how it
9 does it. On the other hand we have a very high degree of concern
10 about the impacts of what its, how it's proposing to do what it
11 does.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. KOGAN: And the scale of that, and how that
14 will impact the neighborhood.

15 CHAIRPERSON GRIFFIS: Important points. You made
16 the statement that the addition of the four bed unit, or the
17 wing, whatever it is, addition, will not be compatible with the
18 surrounding residential area. Do you, can you give me more
19 specifics on what you mean by that?

20 MR. KOGAN: Well, I think what I said is my remark
21 was all encompassing. And what I'm saying was that the kind of
22 expansion proposed in the application would not be compatible.
23 Again, ANC-3f did not separate these matters out. They looked at
24 the whole application.

25 CHAIRPERSON GRIFFIS: Can you separate them out for

1 us today?

2 MR. KOGAN: I think that would be difficult since
3 I'm representing the ANC's views and I'm not sure that I could
4 speak for the entire ANC on that matter.

5 MR. ETHERLY: Mr. Chair, if I may, I'll need follow
6 up a little bit on both your question and Mr. Zaidain's question.

7 You know, as I noted during our conversation regarding the
8 motion, you know, I've felt that the ANC and accompanying
9 parties, but the ANC in this particular case have done a very
10 solid and admirable job of dealing with the complex issues that
11 are raised here.

12 The reason why I state that is, is your report is
13 very specific in terms of what the ANC's concerns are, and we
14 bifurcated, we dealt with that question, so here we are trying to
15 split those two issues up.

16 When you take a look at the ANC's report, which
17 adds the meat to the bone of its resolution, you're very specific
18 about concerns regarding storm water management concerns
19 regarding the heat effect of the asphalt parking lot.

20 It seems as though, very clearly, there are some
21 specific issues that are raised regarding that parking lot. So,
22 I'm almost suggesting to you that in my reading of your report,
23 in my reading of the ANC's report, it's very clear that there are
24 some specific concerns related to the parking lot.

25 But when you get to the issue of the additional, of

1 the expansion to four additional beds, kind of, I think where Mr.
2 Zaidain was probing is that, in all honesty, is there a concern
3 there? I mean that's essentially the real question here.

4 MR. KOGAN: I think the best I can do with that Mr.
5 Etherly is that, I think that the concern that the ANC expressed
6 in it's resolution, and the concerns that you read in the report
7 where concerns with scope and scale.

8 And that scope and scale is laid out in the
9 application. And it is very difficult for me to separate out and
10 say that the scope and scale attaches to one thing or another. It
11 attaches to the application, and that's how we see it.

12 MR. ETHERLY: And my push back there, would be, you
13 know, your report's very specific in terms of the problems that
14 have been identified. I'm reading from page one of the report
15 dated June 20th 2002, or should I say the cover letter which
16 summarizes the resolution.

17 Number one, a 173 space parking lot would likely
18 act as an incentive that will encourage more drivers into the
19 area. So you're specifically linking a problem there to the
20 parking lot.

21 Item two speaks to the visual impact of the parking
22 lot and concerns about the attendant destruction of a number of
23 trees pursuant to the parking lot construction.

24 And then finally, item three, a significant
25 increase in the amount of impervious surface on the site would

1 complicate storm water management.

2 Now there, at least as it's written, you might say,
3 well, perhaps that also includes the four bed expansion, but as I
4 read your report a little further, it seems that the expansion of
5 the impervious surface and the impact on the storm water
6 management also speaks to the parking lot, or the proposed
7 parking lot.

8 So, once again, I'm saying, your report is very
9 good, and perhaps the bifurcation issue doesn't necessarily do
10 you well here, because your report is so good that you're
11 specifically highlighting three problems that relate to the
12 parking lot, but not to the expansion of four additional beds.

13 MR. KOGAN: I understand. I appreciate your point.

14 I would go back to Mr. Danzig's comments earlier regarding the
15 additional parking that, additional parking requirements and
16 traffic demand that gets generated by the addition.

17 You know, we can talk about the number being large
18 or small, but in our mind, it's still there. And I think that
19 while all those points are true I think what we see is a very
20 large facility, very large parking lot, an institution that has a
21 history of growth, that has intentions to expand, at least to
22 these four beds, and these hundred or so additional parking
23 spaces, 98 additional parking spaces.

24 And I think that's what's, that is what drives the
25 ANC's concerns, is the history of expansion, not knowing where

1 this expansion is going to take us. Yes Mr. Etherly, looking at
2 the size and scale of this parking lot. But also knowing that
3 the four beds are part and parcel of that expansion proposal.

4 MR. ETHERLY: Okay. Let me come at it from another
5 side, because I think we've probed that piece a little bit, and I
6 try to give as much as I get, so let me reverse it, and you know,
7 maybe make Mr. Keys a little uncomfortable.

8 Was there any discussion at the ANC level regarding
9 storm water impacts, or any other such issues as it relates to
10 just the expansion component of the construction, of the proposed
11 project, I can recall.

12 MR. KOGAN: I think again, we dealt with it as a
13 whole, as you indicated, to the extent that that addition, again,
14 whatever the size, would increase the amount of impervious
15 surface.

16 I think that was part of our consideration. Part
17 of our deliberation.

18 MR. ETHERLY: Okay. Okay. Do you recall, this may
19 be a question better put to Mr. Keys at the appropriate time, but
20 do you recall, was there any discussion at the ANC level about
21 impact or tree removal as it relates to the expansion, as it
22 related to the building portion of this application.

23 MR. KOGAN: I do not recall any such conversation.

24 MR. ETHERLY: Okay. Okay. Thank you. Thank you Mr.
25 Chair.

1 CHAIRPERSON GRIFFIS: Any cross examination?

2 MR. KEYS: Mr. Kogan, do you have a copy of the ANC
3 resolution with you?

4 MR. KOGAN: I believe I do.

5 MR. KEYS: What was the date of that resolution?

6 MR. KOGAN: It was the one on the application, to
7 the BZA not the COS.

8 MR. KEYS: That's correct, the date of adoption by
9 the ANC.

10 MR. KOGAN: June 17th 2002 is what I'm looking at.

11 MR. KEYS: All right. Now, the text of that
12 resolution, does that text, in any way, identify or reference an
13 attached report of the ANC?

14 MR. KOGAN: I don't see any reference there.

15 MR. KEYS: All right. Now, there is a report
16 that's been submitted, onto your signature. Is that correct?

17 MR. KOGAN: That is correct.

18 MR. KEYS: What's the date of that report?

19 MR. KOGAN: I don't have that in front of me. June
20 20th 2002.

21 MR. KEYS: Did you write that report?

22 MR. KOGAN: Yes I did.

23 MR. KEYS: Is it fair to say that report didn't
24 exist at the time of the resolution adopted by the ANC?

25 MR. KOGAN: I'm not sure that's entirely true. I

1 think it may not have existed in the form that you are looking at
2 it in, but I think it was, had begun to be developed in draft.

3 MR. KEYS: Did the ANC ratify this report on June
4 17th?

5 MR. KOGAN: No. That was not ratified.

6 MR. KEYS: Did you draft the report?

7 MR. KOGAN: Yes, well, I was the principle drafter.

8 MR. KEYS: Who were the other drafters?

9 MR. KOGAN: The other drafters were the other
10 members of the ANC.

11 MR. KEYS: Okay. Going back to the ANC resolution,
12 Mr. Kogan, does that resolution identify an ANC representative to
13 present the resolution to the Board?

14 MR. KOGAN: No.

15 MR. KEYS: The statement you've just submitted, for
16 inclusion in the record dated July 9th 2002, is that something
17 you're offering as an ANC-3f statement, or is that your statement
18 Mr. Kogan?

19 MR. KOGAN: It is my statement on behalf of ANC-3f.

20

21 MR. KEYS: Is that statement referenced in the
22 resolution dates June 17th 2002.

23 MR. KOGAN: No.

24 MR. KEYS: Thank you. No further questions.

25 MR. DANZIG: Just one thing Mr. Chairman. I'd like

1 to come back to Mr. Zaidain's question, Mr. Kogan, to you about
2 the certificate of need being approved, but not necessarily, or
3 perhaps not necessarily envisioning the construction of this
4 facility, are you aware that The Washington Home has acquired the
5 Med Star Health Visiting Nurses Association Hospice Program,
6 community hospices?

7 MR. KOGAN: Yes, I am Mr. Danzig.

8 MR. DANZIG: And that is located on Wisconsin
9 Avenue, a block or two away from The Home?

10 MR. KOGAN: That is my understanding, yes.

11 MR. DANZIG: And is it all the case that The
12 Washington Home, as far as you knew, or know, has acquired the
13 Palliative Care Institute at 4200 Wisconsin Avenue?

14 MR. KOGAN: Yes. I am aware of that.

15 MR. DANZIG: And is, is the case that in your mind,
16 hospice facilities might be constructed in either of those
17 places?

18 MR. KOGAN: I think that might be a possibility,
19 yes.

20 MR. DANZIG: Thank you.

21 CHAIRPERSON GRIFFIS: In what capacity can you
22 answer that question?

23 MR. DANZIG: If I can clarify. I asked the
24 question in the context of as an ANC member approving a
25 certificate of need --

1 CHAIRPERSON GRIFFIS: I see.

2 MR. DANZIG: Is it clear --

3 CHAIRPERSON GRIFFIS: You're asking the direct
4 question of whether hospice facilities could be built on those
5 properties.

6 MR. DANZIG: I said in his mind.

7 CHAIRPERSON GRIFFIS: Right. In his mind. That's
8 where I'm trying to get to.

9 MR. DANZIG: Right. Sorry.

10 CHAIRPERSON GRIFFIS: Do you have experience in
11 building?

12 MR. KOGAN: It was a speculative question and an
13 equally speculative answer.

14 CHAIRPERSON GRIFFIS: Indeed. Thank you. Okay.
15 Others?

16 MR. DANZIG: I think Mr. Chairman, you may have
17 violated the Zaidain rule. I'm not sure you're being to nice.

18 CHAIRPERSON GRIFFIS: Oh, indeed. Indeed. We're
19 trying to break Zaidain in, so, we'll get him there. Okay,
20 anything else for the ANC? Good. Let us proceed now.

21 MR. KOGAN: If I may, Mr. Chairman. The Board did
22 agree at our last hearing on June 25th that ANC-3C did have an
23 interest in the case because of their previous standing as the
24 ANC that has The Washington Home, and ANC --

25 MR. KEYS: I would object to that Mr. Chair, I

1 think the ruling was exactly the contrary. I think that you
2 requested ANC-3C filter anything they wish to offer through ANC-
3 3f, otherwise they could testify, and as a person in opposition.

4 CHAIRPERSON GRIFFIS: Indeed, and I do believe that
5 we decided that we would have one ANC as a party on the case,
6 but, do you want to finish what you were going to say?

7 MR. KOGAN: What I was going to say is that ANC-3c
8 did send representative here today, and that representative is
9 next to me, Mr. Peter Espenschied. And he would like to address
10 the Board.

11 CHAIRPERSON GRIFFIS: Well, I have no problem with
12 that. I mean, we can move to, we've finished the parties cases,
13 or rather we haven't. I mean, let's go to the parties and we
14 will call for your testimony with persons in support or
15 opposition, depending on which one you are.

16 MR. DANZIG: Mr. Chairman, if I could just help for
17 a moment, I'm not going to present a case. I do have comments as
18 a party, but I'd be perfectly happy to let ANC-3c, as he's
19 already at the table, go first, if you prefer.

20 CHAIRPERSON GRIFFIS: That's not my preference.
21 Okay, are you ready?

22 MR. DANZIG: I'm ready.

23 CHAIRPERSON GRIFFIS: Good. Call it what you will,
24 this is your case.

25 MR. DANZIG: Okay. I'm going to simply confine

1 myself not to presenting any material but to some observations on
2 the question of the desirability of approving the addition.

3 CHAIRPERSON GRIFFIS: And what I'm going to do is
4 watch the clock. We're not going to run the clock on you, I will
5 give you five minutes to present what you need to present.
6 Person's will be provided three minutes and if it gets to be
7 absolutely extreme, we will turn the clock on, but I don't
8 anticipate that happening.

9 MR. DANZIG: Thank you. I'll try not to be
10 absolutely extreme. What I would suggest first of all is that we
11 might ask the standard that we're applying here. It seems to me
12 to be one in which the presumption should run on not in favor of
13 building such an addition in an are which is zoned residential in
14 which a special exception status is required, and in which great
15 weight is given to the ANC view.

16 And you've heard the ANC view, that such an
17 addition is not desirable. Speaking on behalf of neighbors who
18 have provided petitions and signed by over sixty people in
19 opposition to an expansion of The Home, either with respect to
20 the addition or the parking lot. And the petitions are explicit
21 on this point.

22 What I would note are basically three points.
23 First, as has been noted in the ANC testimony, there is a history
24 of expansion by The Home that is extremely troublesome to the
25 neighborhood.

1 Historically, The Home began by leasing a large
2 segment of its property to the Post Office on Wisconsin Avenue,
3 immediately adjacent to the home in the 1970's.

4 That increased substantially the traffic and
5 activity in the neighborhood, but it also preempted, by The
6 Home's own choice, building opportunities for The Home that would
7 have been away from the residential area.

8 It followed that in 1984 with a proposal to tear
9 down the existing building and build a new facility. The
10 community and I was quite personally active in this, had very
11 substantial interaction with The Home over this, expressed it's
12 concerns about expansion in the light.

13 At that point, we were assured by The Home that it
14 would not involve an expansion of staff, and that in fact their
15 new building would represent their foreign improvement to the
16 neighborhood in terms of aesthetics and the like.

17 We very carefully and elaborately negotiated and
18 agreed with The Home on landscaping, construction, and other
19 kinds of aesthetic variables which were very important to the
20 evolution of the facility.

21 We couldn't agree on the parking. The parking
22 issue alone went to the BZA, and the BZA, as you know in 1985,
23 decided to allocate only 75 spaces to the home. The Home, not
24 withstanding that, did indeed, subsequently, while observing it's
25 agreements on amounts of money to be spent on landscaping, expand

1 it's staff.

2 By The Home's own submission to you, it records
3 that in 1985, there were 166 nurses on the main shift. Now there
4 are 203. Roughly a 25 percent increase. The Home began running
5 conferences and other activities which substantially exacerbated
6 the neighborhood traffic problems as well as parking problems.

7 Our sense is, that the phenomenon of expansion by
8 the home, adds considerably to the burdens on the community. In
9 1997, The Home came forward and asked for twelve additional beds.
10 That was granted by this Board.

11 Again, those now are used as an occasion for
12 stressing, needs for parking and like, you'll come to that in
13 September. What the reality is, is The Home's own submission's
14 acknowledge these expansions have caused an expansion of their
15 staff, an expansion of visitor flow, an expansion of traffic, an
16 expansion, ultimately of parking demands.

17 A second considerable concern to us, is that more
18 strikingly still, each and every one of these decisions has been
19 then boot strapped by The Home, as an occasion for them doing
20 more than was authorized or occasioned.

21 You've heard testimony that they were, by order of
22 this Board, given 75 parking spaces. They then painted three
23 additional stripes and 78 parking spaces. Indeed, very
24 strikingly, the Office of Planning and the Office of Parking's
25 reports speak as though there were 78 spaces.

1 They then went on, and painted eleven more stripes
2 to create 89 spaces. They went from there to parking in the fire
3 lanes and on the grass. The history is one of indifference to
4 regulation or restriction, and one reason that the neighborhood
5 is so solidly and I think the ANC so unanimously, against
6 approving this, is that realistically the only mechanism for
7 enforcement that this Board has, and that the community has for
8 constraining an organization, is to say, you will not be
9 permitted to make additions of this kind when you generate a
10 record of this kind.

11 And realistically, if this Board goes ahead and
12 approves such an addition, it treats The Home the as though it
13 had clean hands, as though as it was operating in these
14 circumstances, in a matter that was acceptable to the Board.

15 It is not acceptable to the community and it is
16 not, I would hope, not acceptable to the Board. The third and
17 last consideration in our minds, is also quite imperative. It
18 comes back to your questions Mr. Etherly.

19 In reality, an addition, though it sounds simple,
20 imposes first of all, six months of construction on the
21 community. In 1985, is a condition of that construction. We
22 negotiated with The Home and agreed on a number of things.

23 For example, the hour at which staging would occur,
24 the truck routes that were going to occur and the like.
25 Realistically, if this Board approves the addition, no such

1 understandings are likely to be negotiate between The Home and
2 the community because The Home will have once again cart blanch.

3
4 On top of that, the landscaping discussions, which
5 we've extensively had with The Home, have revolved in substantial
6 measure around the parking, but are also affected by an addition.

7
8 An addition is an obvious occasion for curing some
9 landscape problems that exist. For example, the poor landscaping
10 on 38th Street, which we overlooked when The Home was originally
11 arranged and built in 1985.

12 And also with respect to landscaping issues more
13 broadly. Realistically, the issues of traffic flow, water run
14 off, landscaping, are all intertwined with the matter of addition
15 as a matter of procedure in terms of going forward and they also
16 are intertwined as a matter of negotiation.

17 I would suggest to you, that the neighborhood, with
18 remarkable degree unanimity is united on the proposition that it
19 would be better for this Board to with hold approval of this
20 addition, until The Home resolves with the neighborhood the more
21 fundamental underlying issues associated with traffic, associated
22 with landscaping, associated with the parking, associated with
23 water run off.

24 The Home has made representations in 1997, for
25 example, that if parking proved to be inadequate they would look

1 at commercial nearby lots. That was incorporated in the ANC
2 resolution at the time.

3 There is a lot to be discussed, and in my opinion
4 it would be much more productively discussed if the home doesn't
5 get yet another green light to go ahead with an expansion in this
6 context.

7 I would note finally, in conclusion that I
8 appreciate your concern Mr. Chairman, with respect to the
9 question of the certificate of need, but I really to believe that
10 this is a red herring. That there is no suggestion that a
11 certificate of need can not be extended.

12 When I offered the observation earlier in this
13 hearing, that certificate of need was in fact predicated on the
14 notion of completion, Mr. Keys observed that he just was an
15 expert on this to talk with it.

16 I don't think Board has before, enough to warrant
17 moving ahead in a way which would be as destructive as this. So,
18 in conclusion, I would suggest first, relentless expansion ought
19 not to be further encouraged.

20 Second, especially it ought not be intentionally
21 encouraged when the record is of abuse of that expansion as
22 consistently as it has been here. And third, that if an addition
23 is appropriate, it requires protective arrangements associated
24 with it, that haven't yet been established, and resolved between
25 The Home and the community. Thank you Mr. Chair.

1 CHAIRPERSON GRIFFIS: Good. Thank you very much.
2 Let me go to your third point, then. You have concern when you
3 talk about agreements. As you've stated, construction phase?

4 MR. DANZIG: Yes.

5 CHAIRPERSON GRIFFIS: That means materials coming
6 in and out. There was some discussion in the original case
7 presented, did that evidence anything specific for you that
8 brings up, in that, well, I'll let you answer.

9 MR. DANZIG: Yes, Mr. Chairman. In 1985, there was
10 a specific agreement negotiated between The Home and the
11 neighbors. One of the paragraphs of that agreement spoke to the
12 arrangement for parking. And it provided that --

13 CHAIRPERSON GRIFFIS: For construction work --

14 MR. DANZIG: I'm sorry, I misspoke, for
15 construction.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. DANZIG: It provided that, and I'll just
18 summarize. During the construction period The Home will require
19 construction vehicles to use the particular routes in reaching
20 The Home. That The Home will require posting of flag men,
21 etcetera.

22 CHAIRPERSON GRIFFIS: Okay. And that was for the
23 entire new facility, correct?

24 MR. DANZIG: Correct.

25 CHAIRPERSON GRIFFIS: Which obviously, I think your

1 would agree, is of substantially increased scope of work as
2 opposed to what we're looking at with the small addition,
3 correct?

4 MR. DANZIG: I definitely agree with that. But my
5 recollection, which may be marginally incorrect, is that the new
6 construction was on the order of, I'm going to say 18 months.
7 This construction described as only four bed, as has been
8 testified to, will take six months.

9 During this time also we have potentially the
10 tearing up of Upon Street, which The Home has not accounted for
11 city reconstruction.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. DANZIG: A large amount of school traffic. The
14 1985, agreement specified that they would not run trucks during
15 the school drop off and delivery times. The 1985, agreement
16 spoke specifically with respect to the hours at which the
17 Contractor would use set up material and the like.

18 CHAIRPERSON GRIFFIS: I don't understand that.

19 MR. DANZIG: Okay.

20 CHAIRPERSON GRIFFIS: Mr. Keys, are you able to
21 answer the questions?

22 MR. KEYS: Yes. I think the record, that's the
23 reason why we had Mr. Armentrout present and to testify.
24 Because, although Mr. Danzig makes no reference to it, there have
25 been discussions about these various issues with the community.

1 We have proffered the commitments regarding
2 construction derived from that 1985 agreement that we thought
3 were appropriate to this job. We don't have anyone on the other
4 side that's going to respond or that has responded to it.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. KEYS: And I think that we would certainly
7 encourage the Board to review the testimony of Mr. Armentrout and
8 adopt the parameters that he suggested, that they've already
9 looked at and examined limiting construction hours.

10 We can park all construction vehicles on site.
11 We'll predetermine the routes vehicles approach the, you know we
12 can do a number of things in an order that would, I think,
13 provide the effective safeguards.

14 If the community really wants to confirm these
15 agreements, they need only come to us and pick up the things that
16 we've already given them.

17 CHAIRPERSON GRIFFIS: Good. And hopefully that's
18 heard by the community and I'll let that be what it is. However,
19 my specific question was are you able to answer the questions of
20 the anticipated loading of materials for this addition, any sort
21 of construction schedule?

22 What's the basic impact on the street? Or is there
23 a witness who could get that?

24 MR. KEYS: I think Mr. Armentrout's testimony was
25 in there in terms of --

1 CHAIRPERSON GRIFFIS: Right.

2 MR. KEYS: -- the number of vehicles that he
3 thought would come, the period of time --

4 CHAIRPERSON GRIFFIS: Just to be clear, because
5 most of his testimony was based on the construction phasing of
6 the surface parking lot. And that's what I'm trying break out
7 here for the Board's deliberation, bringing up the point from the
8 community that we're going to have construction problem.

9 I want to start to focus on what the actual impact
10 is, and whether it is substantial enough that it looks like it
11 is. Well --

12 MR. KEYS: It is, I think Mr. Armentrout testified
13 that he expects a six month construction period. I think the
14 Hospice construction would run that entire period of time.

15 The parking lot construction is a much shorter
16 scope of work. I think he was looking at 60 to 90 days to
17 complete that. And that could be phased along with the ongoing
18 construction of Hospice.

19 But the building addition is the major time
20 consuming element.

21 MR. DANZIG: Mr. Chairman, can I, or when it's
22 appropriate, if I can just add a minute's worth of comments. I
23 can wait. You can charge me for the time.

24 CHAIRPERSON GRIFFIS: Go.

25 MR. DANZIG: I would just note, when Mr. Keys that

1 the Board can write anything, of course, into its order, we've
2 had this experience a number of times. The Home has not abided
3 by the resulting orders.

4 CHAIRPERSON GRIFFIS: Indeed.

5 MR. DANZIG: The questions also that I've raised
6 fundamentally say, why would the Board, when I think this can be
7 entered into by agreement between the community and The Home, why
8 would the Board want to act first?

9 I agree with you if there is a compelling reason
10 for acting I understand it. But no compelling reason has been in
11 fact presented. The Certificate of Need reason has not been
12 presented in any way that I think.

13 CHAIRPERSON GRIFFIS: But you're saying what's
14 compelling the Board to act now when we could hang around and
15 wait for an agreement to be set by the community and the
16 Applicant?

17 MR. DANZIG: Well, I'm not going to quarrel with
18 the verbs, but I would suggest that, in fact, whenever you have a
19 case where the community and the Applicant have some opportunity
20 to come to resolution, and where you've got a part of it that
21 hasn't yet been resolved, there's a lot to be said where it's
22 tied into a number of other issues, to making the substantive
23 decision you have, made the procedural decision to hear it.

24 But to make the substantive decision to stay your
25 hand and push the parties together or at least to highlight what

1 their differences are.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. DANZIG: Thank you.

4 CHAIRPERSON GRIFFIS: And we get good and bad press
5 for doing that exact thing.

6 MR. DANZIG: Well.

7 CHAIRPERSON GRIFFIS: So, it all depends. I think
8 there's been ample time with this. I think agreements are there.
9 We can't, we can't force an agreement to be made. Certainly we
10 encourage that happening, it makes our job easier.

11 However, without that, I think what will come
12 before is we need evidence of problems that we would need to
13 condition. I will also point out to the fact that this Board
14 takes very seriously conditions that it puts on orders.

15 And its seriousness comes from, first of all,
16 directly to the zoning relief requested, so each condition would
17 be tied directly to that.

18 Secondly, we look very strongly on correcting our
19 conditions that are actually enforceable. And so I take with
20 great concern the fact of our past condition, perhaps, was not
21 enforced or followed. So we will clearly look at that.

22 MR. DANZIG: Could you comment, Mr. Chairman, I
23 think it would be helpful to the community, if you would be
24 inclined to, about your view, I don't mean necessarily
25 specifically about The Home, about violation of past BZA orders?

1 Not ones this Board has handed down, with careful crafting.

2 CHAIRPERSON GRIFFIS: Now probably wouldn't be the
3 appropriate time for me to take that position.

4 MR. DANZIG: Okay.

5 CHAIRPERSON GRIFFIS: However, Mr. May, do you have
6 other things to add?

7 MR. MAY: Yeah, I just have a question for Mr.
8 Danzig. The, in your statement, and it was mentioned earlier as
9 well by others, there's this general notion about an
10 incompatibility between a health care facility such as this in a
11 residential neighborhood.

12 Would you want to, would you be willing to
13 elaborate a little bit on that? On what, in terms of what
14 inherently, and I mean your concern is that this thing is going
15 to grow and keep growing and get bigger and have a bigger impact
16 on the neighborhood.

17 I mean clearly the zoning allows for facilities
18 like this in an R-1 neighborhood through the Special Exception
19 process. So what are the constraints that you would see?

20 MR. DANZIG: I think it's a good question. My own
21 belief is that a facility like this and the neighborhood are
22 indeed compatible. That the 1985 decision of the BZA generated a
23 compatible situation.

24 But to maintain that compatibility, there really
25 has to be compliance with agreements and good faith follow

1 through. So that when The Home proceeds to do what it did with
2 respect to the parking or follows through on the 1997
3 representation that they don't need additional parking for 12 new
4 nurses and then submits a parking study that shows they do need
5 additional parking based on 12 new nurses, amongst other things.

6 That destroys, if you will, the relationship. And
7 the reason that I'm arguing to the Board, quite sincerely I think
8 Mr. Etherly's comment was, you know, honestly how do we feel
9 about the addition?

10 My suggestion to the Board would be that you have
11 to see the addition in the context of the relationship between
12 The Home and the community. And that relationship is one that
13 deteriorates when moves are made by one party or another without
14 a resolution that really meshes the different concerns.

15 I'm rather confident that in the end that I think
16 this may underlie some of the Board's feeling. The community
17 would, in fact, approve an addition of four beds if it was part
18 and parcel of things like a mass transit plan, landscaping,
19 drainage and the like.

20 But, and I think if you take it away and make that
21 decision yourselves, you're going to get just that much more
22 community resistance, and frankly I think you will encourage, not
23 only this institution, but other institutions throughout the city
24 to say, well, we can certainly ignore at least past BZA orders
25 because it has no consequence.

1 We come before the BZA and they approve new ones.

2 MR. MAY: I'm not going to get into the issue of
3 that, how people treat past BZA orders. But, and I'm a little
4 bit troubled by the notion that you're expecting us to simply
5 evaluate this based on how, how good they've been playing in the
6 sandbox with you, because it's just, there's, it gets very messy
7 for us.

8 And we have to look to the zoning regulations for
9 our guidance. And I guess the, what I still find troubling is
10 this notion that somehow there is inherent in creating or adding
11 to a health care facility in a residential neighborhood, when in
12 fact there is guidance for us in the regulations.

13 And, you know, where it says that we can approve a
14 health care facility of nine to 300 beds within an R-1 District.

15 And it lays out what the considerations should be. And clearly
16 at less than 200 beds, or in the neighborhood of 200 beds, that
17 this falls within that realm.

18 And that what we have to be considered with are, be
19 considering at this point are measurable impacts as opposed to,
20 well, you know, how well do they live up to one particular
21 statement that was made at a past Hearing.

22 I mean circumstances do change. People's opinions
23 of things can change, management can change. There are all sorts
24 of reasons why the situation may be different now from The Home's
25 point of view and why they have to be, why they have to respond

1 differently to a given circumstance.

2 What I'm getting at is that the zoning regulations
3 are pretty clear, and what is spelled out is allowable and how we
4 should guide ourselves in our decision making. And it doesn't
5 allow for some of the things that you suggested we should be
6 considering.

7 MR. DANZIG: I understand the proposition that
8 circumstances may change. My suggestion is when circumstances
9 change, most of us go back to the appropriate authority and seek
10 approval for a change in the regulation that guides us.

11 We don't just paint stripes, break fire laws,
12 etcetera. But coming to the fundamental point that you're
13 making, yes, the zoning permits you to expand a health care
14 facility beyond, up towards 300 beds.

15 In my opinion, then, what you do, if I understand
16 your function correctly, is to make a judgement about how well
17 the proposal actually measures with the needs of the community
18 and the maintenance of the zoning environment.

19 And in that you give great weight to the ANC, and I
20 hope and take it to the kind of testimony you've heard.
21 Realistically, The Home, to spite I think good faith on their
22 part in trying to talk to the neighbors, has not found its way to
23 a resolution that really does attend to the cares of the
24 neighborhood.

25 And I think it's well within your function and very

1 appropriate for you to say, we are not going to approve
2 additional construction until we see some better evidence of good
3 faith concern for those kinds of cares.

4 As for example, when you say in 1997, you're going
5 to look at commercial parking and so on, following through on
6 that. Or when mass transit has raised an issue, following
7 through on that.

8 But specifically with respect to the addition,
9 there are the issues of, as I say, the questions about
10 landscaping. What is the construction arrangement and the like.

11 And I think it's well within the Board's authority to say, we're
12 not yet persuaded that this is appropriately reconciled to the
13 community.

14 CHAIRPERSON GRIFFIS: Well, and just to be
15 perfectly direct in terms of if we approve a Special Exception.
16 That means that we have found that the application is in harmony
17 with the zone plan and the zone map.

18 And two, that it does not tend to affect adversely
19 the neighboring residents. That's my words, not directly
20 reading.

21 MR. DANZIG: Mr. Chairman, I think you couldn't
22 possibly say that it does not adversely affect the neighborhood
23 residents since the record and the like is clear with admissions
24 from The Home that it will increase the parking, the traffic,
25 etcetera.

1 You'd have to say that on balance, the game seems
2 to you to be worth it. And my only suggestion is, in my opinion,
3 obviously biased by the fact that I'm a resident, but informed by
4 that as well. There isn't a powerful case that this is worth it
5 at this time. It will be worth it if it is part of a larger
6 understanding.

7 But it is not, and I would suggest to you, a good
8 idea to unto itself.

9 CHAIRPERSON GRIFFIS: Well, and I agree. And what
10 I'm, the point I'm trying to direct you to is evidencing more
11 adverse affects, not whether it's, there it is. I think you
12 understand. Good. Any other questions?

13 Are you finished with cross examination? I think
14 we interrupted that flow.

15 MR. KEYS: Yes. And I don't intend to cross
16 examine Mr. Danzig.

17 CHAIRPERSON GRIFFIS: Good.

18 MR. KEYS: But I would like to reserve and preserve
19 an opportunity to summarize, at the presentation, after the --

20 CHAIRPERSON GRIFFIS: Absolutely.

21 MR. KEYS: -- all the witnesses and all the --

22 CHAIRPERSON GRIFFIS: Let us get on to the
23 testimony then. Following the testimony we can have you give a
24 conclusion and summary. Why don't we have everyone that is
25 interested in testifying today come to the table and we'll see if

1 we have enough chairs.

2 MR. DANZIG: And, Mr. Chairman, I'm sorry. Could
3 you just enlighten me on your procedure. Do we have any
4 questioning of these people or we're done?

5 CHAIRPERSON GRIFFIS: No, you have cross
6 examination rights --

7 MR. DANZIG: I see.

8 CHAIRPERSON GRIFFIS: -- of all the witnesses.

9 MR. DANZIG: I will encourage you by saying I don't
10 intend to use much.

11 CHAIRPERSON GRIFFIS: Okay. It's absolutely your
12 decision.

13 MR. DANZIG: Thank you.

14 CHAIRPERSON GRIFFIS: Is anyone giving testimony
15 today? Yeah, let me call, let me call everyone up, in support or
16 in opposition. Anybody that is interested persons to give
17 testimony today.

18 And what I will ask, as you introduce yourself, you
19 can just identify if you are in support, opposition or neutral,
20 if that's an option. Good.

21 MR. GUYOT: I am Henry Guyot, G-u-y-o-t. I live at
22 4108 38th Street, approximately 175 yards from The Washington
23 Home.

24 CHAIRPERSON GRIFFIS: Good. And let me, before you
25 jump into, as I stated before, that we allow three minutes per

1 person. So I will keep an eye on the clock.

2 MR. GUYOT: I have lived with The Washington Home
3 for 34 years. And I have been involved in some of the issues
4 about land use and institutions in this area beginning with the
5 location of the Post Office on Wisconsin Avenue.

6 They say that if you can't run with the big dogs,
7 you should stay on the porch. But if all of the relevant issues
8 are out there in the yard, you have to venture out.

9 And I appreciate the good work of this Board in
10 trying to provide a venue for the airing, complete airing of such
11 issues. I have a petition here. which points most directly to
12 the parking, from 48 residents who signed it a long time ago back
13 in March.

14 Which does not provide any guidance for bifurcating
15 this thing, but most of it has to do with an attempt to re-
16 balance some of the problems that were achieved over the course
17 of years since The Washington Home did its expansion in '87.

18 And our concern was predominantly to support The
19 Washington Home in trying to resolve, in a legitimate way, the
20 problems that they create. And our belief is, basically, that
21 institutions should solve the problems that they make. They
22 should solve them as best they can without doing more harm.

23 And in this case, the basic thrust was that a
24 substantial increase in the amount of parking would solve a
25 problem that has been egregious in the neighborhood. And that we

1 therefore would support them, even though we had somewhat other
2 concerns about the expansion and the creep, which has occurred
3 over the years with the mission of The Home.

4 I have not been able to see what my time is, but I
5 will speed up just a little bit. Simply to say that --

6 CHAIRPERSON GRIFFIS: Another minute.

7 MR. GUYOT: Okay. But I do want to join with my
8 neighbors in saying that many of their concerns I share. It is a
9 very difficult kind of thing to resolve these things in any
10 venue, much less to resolve it in a neighborhood situation where
11 you don't really have a meeting.

12 So you try the ANC, and you try the BZA, and
13 sometimes those don't work and sometimes it's best just to walk
14 down the street and talk with your neighbors.

15 But that runs into the problem, again, of whether
16 you've really heard from everybody involved. And when it comes
17 to a matter of parking and the impact of institutions. When it
18 comes to a matter of institutions with ambitions to grow, these
19 are things which are a little complicated for just incidental
20 discussions.

21 So I have this personal hope. That you will
22 postpone the decision about the four units, and raise the
23 pressure just a little bit so that we have a sense that we will
24 try to work within the neighborhood to get our issues out in an
25 effective way.

1 And hope that we can re-balance some of the
2 problems that have built up within the neighborhood over the
3 years. Those of us who are closest to Wisconsin Avenue feel the
4 pressure of parking much more.

5 Those who have the aesthetic concerns down at the
6 corner, as well as the problems of traffic on 37th Street for
7 Sidwell Friends and others, and her school, we have some
8 differences.

9 We would like to work them out, and we would like
10 to have a neutral court be able to then judge whether we have
11 done a good job on these.

12 CHAIRPERSON GRIFFIS: Very good. Thank you very
13 much. Any questions on the nature of that witness? Questions
14 from the Board? Good. Thank you. You have a question? Okay,
15 before you are excused, sir.

16 MS. PERRY: Since parking has been split, would the
17 same number of people be using the additional parking?

18 MR. GUYOT: I have learned something, and that's a
19 level of speculation that I don't think I'm in any position to
20 answer.

21 CHAIRPERSON GRIFFIS: Good, thank you. Any other
22 questions? Yes, sir.

23 MR. ESPENSCHIED: I'm representing an organization
24 in opposition, namely Advisory Neighborhood Commission 3C, who's
25 territory abuts The Washington Home, but does not include it.

1 I'm Peter Espenschied, Chairman of the Consumer
2 Affairs Committee of ANC-3C and a member of its Planning and
3 Zoning Committee. I've been designated by the ANC's Chairman to
4 testify at this Hearing in support of the ANC's unanimous
5 resolution of June 24, which opposes The Washington Home's
6 Special Exception Application.

7 The resolution says, whereas The Washington Home
8 has applied to the Board of Zoning Adjustment for a Special
9 Exception that would include the expansion of parking lot spaces
10 from 75 to 173.

11 And whereas, The Washington Home was within the
12 boundaries of ANC-3C when the existing order, issued March, '86,
13 authorized a maximum of 75 parking spaces. And whereas, the
14 Applicants are required by law to comply with all conditions of
15 the Zoning Order or risk having the order and any subsequent
16 Certificate of Occupancy rescinded.

17 And whereas, The Washington Home has marked parking
18 spaces in excess of the 75 allowed spaces and allowed cars to
19 park on other paved and unpaved areas of the property not zoned
20 for parking.

21 And whereas, ANC-3C boundaries are directly to the
22 south of The Washington Home, and many ANC-3C residents are
23 impacted by The Washington Home. Therefore, be it resolved, that
24 ANC-3C opposes The Washington Home Application for Special
25 Exception on the basis of their noncompliance with the existing

1 zoning order, and urges the BZA to prohibit Special Exception
2 Applications from this Applicant and any others who have not
3 demonstrated compliance with zoning orders.

4 And further, to require that all conditions and
5 elements of applicable zoning orders be in compliance before an
6 Application for Special Exception will be accepted and scheduled
7 for Hearing. And urges the BZA to recognize that it encourages
8 noncompliance with its orders if it allows applications to be
9 accepted from entities that are in continuing violation of a
10 previous BZA Order.

11 We urge you to deny The Washington Home's
12 Application, because The Home is in current and continuing
13 violation of its previously granted Special Exception. And it
14 has, in addition, materially misrepresented to the Board the
15 facts concerning this matter.

16 Careful on site research done for ANC-3F, which we
17 find to be credible and reliable, indicates that The Washington
18 Home has and currently maintains marked parking spaces
19 substantially in excess of the number authorized under the
20 existing Special Exception granted March, 1986.

21 In addition, there is compelling evidence,
22 including testimony of The Home's own witnesses, showing that The
23 Home has made not even a slight effort to prevent illegal parking
24 by giving warnings and then MPD tickets to the large daily
25 population of illegally parked vehicles.

1 In performing its obligation to maintain the
2 integrity of the zoning plan, the Board must not encourage the
3 appearance that its orders can be ignored with impunity.

4 Lacking any practical means of monitoring and
5 enforcing its prior orders, the Board should place great emphasis
6 on the expectation that any Applicant who comes before it does so
7 in a posture of complete compliance with previous standing orders
8 of the Board.

9 This case presents an unusually clear cut example
10 of the opposite situation. This Applicant is in substantial non-
11 compliance, and in addition has misrepresented to the Board the
12 facts that they are on that noncompliance.

13 Disregard of zoning requirements injures everybody.
14 It's a blot on the landscape of the city. All over the city the
15 Owners, there are Owners and Developers who have learned that
16 ignoring BZA Orders is a free prerequisite of doing business in
17 Washington, D.C.

18 Every land use activist in the city can give you
19 examples of Developers who are in continuous violation of the
20 orders of this Board.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. ESPENSCHIED: Therefore, we ask you --

23 CHAIRPERSON GRIFFIS: Go ahead, summary.

24 MR. ESPENSCHIED: We ask you to deny The Washington
25 Home's Application for a new Special Exception, or alternatively

1 to defer the present proceeding, pending an Evidentiary Hearing
2 on the issue of whether the Applicant is in current violation of
3 its existing Special Exception Order, and whether the Applicant
4 has submitted information to the Board that materially
5 misrepresents the present configuration of its parking lot.
6 Thank you.

7 CHAIRPERSON GRIFFIS: Thank you very much. First
8 of all, I don't think the Board makes an order that we don't
9 intend to be enforced and followed. But I take with great
10 concerns the testimony that we've heard now numerous times in
11 terms of setting up some sort of idea that one can be rewarded
12 for noncompliance, which I don't think this Board agrees with,
13 and would not want to continue. Mr. Keys.

14 MR. KEYS: I have a few questions. Mr.
15 Espenschied, were you present at the April 2nd, Hearing in this
16 matter?

17 MR. ESPENSCHIED: BZA Hearing?

18 MR. KEYS: That's correct.

19 MR. ESPENSCHIED: No.

20 MR. KEYS: Have you reviewed the transcript of the
21 April 2nd, BZA Hearing?

22 MR. ESPENSCHIED: No, I haven't received, reviewed
23 the transcript. I have had discussions.

24 MR. KEYS: So you have no personal knowledge of
25 what was said in the course of that Hearing?

1 MR. ESPENSCHIED: I wasn't present at the Hearing,
2 therefore I don't have direct personal knowledge of what was said
3 in that Hearing.

4 MR. KEYS: Thank you. Thank you. So when you talk
5 about the testimony of the Applicant's witnesses regarding
6 enforcement policy, you were not here when Ms. O'Connor spoke
7 about that?

8 MR. ESPENSCHIED: Well, in answer to that question,
9 I have to remind you the testimony on this was given at the last
10 Hearing of the BZA on this matter, which I was present at and I
11 did hear that testimony.

12 MR. KEYS: No, I was speaking about Ms. O'Connor's
13 testimony. You've never heard her?

14 MR. ESPENSCHIED: No.

15 MR. KEYS: Or read her remarks regarding The Home's
16 policies?

17 MR. ESPENSCHIED: Not from the April Hearing, no.

18 MR. KEYS: Thank you. Now you have said, Mr.
19 Espenschied, and I really would have to ask you to clarify this.
20 You have said that the Applicant has misrepresented itself to
21 the Board.

22 You used that term twice. Would you please be
23 specific and indicate in what way the Applicant has misrepresented
24 a fact to the Board.

25 MR. ESPENSCHIED: Yes.

1 MR. DANZIG: Mr. Chairman, I'm going to object, if
2 I can. Simply because --

3 CHAIRPERSON GRIFFIS: I'm not sure if you can.

4 MR. ESPENSCHIED: I'd be happy to answer the
5 question.

6 MR. DANZIG: Well, my only observation would be we
7 were prepared to, we are prepared to present a case on parking
8 with respect to violations and the like.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. DANZIG: But having narrowed the --

11 CHAIRPERSON GRIFFIS: Okay, but this is going to
12 direct testimony that we've just heard. And he did make the
13 statement of misrepresentation. If it goes to the parking, then
14 that will be answered right now.

15 MR. ESPENSCHIED: It does go to the parking.

16 CHAIRPERSON GRIFFIS: Good. There it is. Next
17 question.

18 MR. ESPENSCHIED: The case, the diagram, I mean he
19 asked whether I have direct knowledge of this, and I do. I've
20 seen the diagram --

21 CHAIRPERSON GRIFFIS: The parking diagram?

22 MR. ESPENSCHIED: Yes.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. ESPENSCHIED: -- showing that there are 75
25 spaces.

1 CHAIRPERSON GRIFFIS: Let's hear it in September
2 then. We're not going to hear it today.

3 MR. ESPENSCHIED: Fine.

4 CHAIRPERSON GRIFFIS: Any other questions?

5 MR. KEYS: No, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Good. Board questions?
7 Parties? Very well. Okay, we have one last person to do
8 testimony today on this Application?

9 MR. DANZIG: I'm sorry, if I could just clarify.
10 There were five other people who want to testify from the
11 neighborhood who couldn't be here on this day.

12 We solicited from them letters which we've
13 submitted to the Board 20 copies, so they won't actually be
14 testifying, but we've submitted written material.

15 CHAIRPERSON GRIFFIS: Right. Indeed. And I think
16 they are mostly dated July 8th, if I'm not mistaken. Well, July,
17 okay. I think we have them. Good.

18 MS. BEELER: Yes, my name is Barbara Beeler, and I
19 live at 3505 Tilde Street. Which is about two blocks from the
20 back entrance to The Washington Home.

21 And the way I get out of my section of Tilde Street
22 is I have to go up to 37th Street, and I won't deal with the
23 parking and traffic issues. But they're real.

24 It's very hard to get out of our neighborhood at
25 certain times during the day because of the problem of

1 institutional development in this neighborhood. You asked
2 earlier, well what are the impacts of having a large facility
3 like this in a residential area?

4 It's, I, Mr. Mann, must have to remind you that we
5 don't have one. And that in September we'll be bringing some
6 wonderful aerial photographs which show you the multiple ones
7 that we have.

8 We have The Washington Home. We have Sidwell
9 Friends School, which goes from Wisconsin Avenue to 37th Street.

10 And right across the street, these are all on one intersection,
11 we have The Hearst School, which is currently going to be
12 tripling its footprint in about two to three years.

13 So what we go back to is the thing Ms. Perry talked
14 about earlier today, which is that the Ward 3 plan does ask that
15 the Board seriously consider the issues of institutional
16 encroachment in the neighborhood and help to control that.

17 And that you have to understand, from the
18 neighborhood's point of view, four more beds, those could be
19 probably organized, if The Home chose to, under the existing
20 roof. But they want to do an addition.

21 So it's like more and more and more. I grew up in
22 Washington, I grew up in Ward 3. My husband grew up in
23 Washington, he grew up in Ward 3. We came back a year ago to
24 this neighborhood because it's home.

25 And I really ask that for all of us who make this

1 area our home, our residence, that you help to serve as the
2 mechanism to help stem the encroachment of institutional growth
3 in this wonderful little corner of Washington. Thank you.

4 CHAIRPERSON GRIFFIS: Thank you very much. You made
5 the statement that they could conceivably have the four beds
6 organized in the existing structure. Is that what you stated?

7 MS. BEELER: My understanding, in reading the
8 testimony, that The Home is planning to do substantial, or doing
9 interior renovation as a part of their plan when they add the
10 four rooms. And the question is, you know, which, you know, I'm
11 not an Architect or a Space Planner, but --

12 CHAIRPERSON GRIFFIS: No, I'm not asking you to lay
13 out the plan.

14 MS. BEELER: -- but there's, you know, four rooms
15 might be able to be right in there somewhere else.

16 CHAIRPERSON GRIFFIS: Okay. But it goes to the
17 next question then.

18 MS. BEELER: Yeah.

19 CHAIRPERSON GRIFFIS: The number of beds or the
20 addition of the four beds, you do not see as tending toward
21 adversely affecting the area?

22 MS. BEELER: Yes, I do. Because it's part of the
23 institutional growth, the encroachment which we're asking you to
24 stop.

25 CHAIRPERSON GRIFFIS: Okay. I didn't understand

1 the point then of saying --

2 MS. BEELER: Okay.

3 CHAIRPERSON GRIFFIS: -- they could just
4 incorporate four new beds within the existing building.

5 MS. BEELER: Because you're not adding more
6 physical, they could put it under the existing roof.

7 CHAIRPERSON GRIFFIS: But it's still four more
8 beds?

9 MS. BEELER: Yeah.

10 CHAIRPERSON GRIFFIS: So those don't tend to
11 adversely affect the neighborhood? It's the construction of the
12 addition that is --

13 MS. BEELER: It's the construction is a real issue.
14 And we're going to have to live with construction noise and the
15 impacts and all those things we've alluded to.

16 CHAIRPERSON GRIFFIS: Which is temporary.

17 MS. BEELER: Yeah, it's, yeah, but when you're
18 going through it, you know, it doesn't feel temporary, you know.
19 And that's part of the negative impact.

20 CHAIRPERSON GRIFFIS: Not while it's happening it
21 doesn't feel temporary. I can get that.

22 MS. BEELER: Yeah.

23 CHAIRPERSON GRIFFIS: Okay. Any other questions?
24 Cross examination? Parties?

25 MR. DANZIG: Yeah, if can just very briefly. If I

1 understand you correctly, is this a fair summary? The addition
2 of four beds, as The Chairman was suggesting, within the hospital
3 facility might be objectionable to you, but it would be less
4 objectionable if --

5 MR. KEYS: I'm sorry, he's testifying, he's not
6 cross examining. He asked a question.

7 CHAIRPERSON GRIFFIS: Well, it's kind of more like
8 redirecting a witness, but --

9 MR. DANZIG: Well, it is cross examination. But
10 that's fine. Maybe the witness can make a statement.

11 MR. KEYS: The witness just made a statement.

12 MR. DANZIG: Let me ask, all right. I will ask the
13 question. May I ask it?

14 CHAIRPERSON GRIFFIS: Yes.

15 MR. DANZIG: I'm sorry, if it's reasonably clear to
16 you, I have no desire to pursue it. Thanks.

17 CHAIRPERSON GRIFFIS: It's clear to me. Is it
18 clear to others what's happening? Very well. I don't take your
19 testimony to mean that the addition of beds have no adverse
20 affect, and that's actually what I was trying to get you to
21 directly address the Board.

22 Because your statement, if read in the transcript,
23 will read as it doesn't matter if they increase beds within the
24 existing building in their redesign. What actually is the
25 difficulty is the addition, some additional structure. And I

1 just wanted clarification on that.

2 MS. BEELER: It's relative degree of impact.

3 CHAIRPERSON GRIFFIS: Right.

4 MS. BEELER: And that the adding, the construction
5 will have for that period that we have to live with it clearly
6 adverse impact in the neighborhood.

7 CHAIRPERSON GRIFFIS: Right.

8 MS. BEELER: But, you know, in the great scheme of
9 things it seems like there are lots of other areas in the city
10 that might be well benefit Hospice rooms. And we ought to be
11 looking at de-institutionalizing instead of centralizing them all
12 in one place.

13 CHAIRPERSON GRIFFIS: Interesting point. Okay.
14 Anything further? Very well.

15 MS. PERRY: A representative from Erik Gaull, who
16 is running for Ward 3 Council Person left with us a statement
17 that he would like one of us to read into the record or I can
18 just pass on to you. Because he couldn't stay tonight.

19 CHAIRPERSON GRIFFIS: Why don't we just submit it
20 into the record.

21 MS. PERRY: Okay.

22 CHAIRPERSON GRIFFIS: Can you provide the parties
23 and Applicant with copies also?

24 MS. PERRY: This is the only one I have and they
25 are closed next door. He just ran out and left it with Peter.

1 Oh, okay. Thank you.

2 CHAIRPERSON GRIFFIS: Does Mr. Gaull live in the
3 vicinity?

4 MS. PERRY: Truthfully, I don't know where he
5 lives.

6 CHAIRPERSON GRIFFIS: Indeed. Maybe it will say in
7 the letter. All right, we'll take it for what it is when he gets
8 in here.

9 MS. PERRY: And he, the statement is an objection.
10 I haven't read it myself yet, I just knew it was left here.

11 CHAIRPERSON GRIFFIS: That's fine. Okay.

12 MR. ESPENSCHIED: I could answer The Chairman's
13 question.

14 CHAIRPERSON GRIFFIS: That's okay, I don't need it.
15 That's being sent in. No other testimony at this time, I would
16 go towards closing remarks on this, and then, well, and then
17 there it is.

18 MR. KEYS: Mr. Chairman, I'll be very brief. The
19 task that the Board has got in weight a Special Exception is to
20 look very precisely at the regulatory standards.

21 And I think this case is, this portion of the case
22 is very interesting because no one makes reference to the
23 standards in criticizing the application.

24 And I think the Office of Planning was correct in
25 its analysis that this diminimus addition to the footprint of the

1 building, on a structure that is substantially under built, is an
2 unobtrusive way of responding to the city's declared need for
3 more hospice facilities.

4 I think The Home has taken into consideration its
5 neighbors in the setback of this facility and the scale of this
6 facility, and trying to make it as efficient as possible.

7 I think the testimony, the unrebutted testimony is
8 that this is a useful and efficient addition to the neighborhood
9 that is consistent with the standards and regulations that
10 require the Board to judge the use in terms of its impact on
11 adjacent property.

12 And I think there is none in this instance. I
13 think it's very significant, as you look at the ANC resolution in
14 this case, to note that the word hospice addition does not
15 appear. And I think it's very significant.

16 I think it's disingenuous for the ANC to suggest
17 that they have ever had a problem with the addition of hospice
18 beds. And because of the structure of that resolution, I'm going
19 to ask the Board to recognize that the resolution neither
20 indicates that there is an attached report, nor does it designate
21 a spokesperson.

22 And those are both procedural requirements for this
23 body to give great weight to the view of the ANC. And, in
24 speaking of great weight, I think it's maybe useful to go back
25 over that.

1 The court standards, as the Board is aware,
2 interpreting great weight does not mean genuflection at the views
3 of the ANC, but merely that the ANC needs to state reasons for
4 its views.

5 And the Board must specifically respond to those.
6 It doesn't have to agree with them, it simply has to respond.

7 CHAIRPERSON GRIFFIS: I think we're fairly
8 familiar.

9 MR. KEYS: And I think on this case, I think that
10 the record is clear that the hospice addition is consistent with
11 the standards of Section 219 of the Zoning Regulations. Thank
12 you very much.

13 CHAIRPERSON GRIFFIS: There's no rebuttal on
14 closing remarks.

15 MR. KOGAN: I don't want to rebut, I just want to
16 clarify a factual point.

17 CHAIRPERSON GRIFFIS: Actually, I don't think we
18 have the opportunity for that at this point.

19 MR. KOGAN: I'll wait until September. Thank you.

20 (Whereupon, the foregoing matter
21 briefly went off the record.)

22 MR. KEYS: Mr. Chairman, excuse me. I've just been
23 handed a copy of the last witness exhibit that was submitted, and
24 I would object to it. This is an unsigned piece of paper with
25 line outs on it.

1 Now if the person submitting this can't stay to, I
2 mean, there's no authentication, there's no authenticity to this.

3

4 CHAIRPERSON GRIFFIS: It came from his
5 headquarters.

6 MR. KEYS: I have no idea who this person is. And
7 I would suggest that this be stricken from the record.

8 CHAIRPERSON GRIFFIS: Any comments? Who is it that
9 submitted this?

10 MR. KOGAN: Mr. Chairman, we would have no
11 objection to your striking it from the record if you read it
12 carefully first.

13 (Laughter.)

14 CHAIRPERSON GRIFFIS: Let me read this to decide
15 whether it's approvable.

16 MS. PERRY: The person that was here that left the
17 statement with us works for Eric Gaul1 in his campaign.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. PERRY: I think what we could do, if it makes
20 it easier, is withdraw --

21 CHAIRPERSON GRIFFIS: Here's what we can do.

22 MS. PERRY: -- let them strike it.

23 CHAIRPERSON GRIFFIS: We're not going to accept it
24 into the record right now, because actually that has no meaning
25 without a signature. Secondly, I'm sure Mr. Gaul1 will become

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1 very well aware, if isn't already, of the proper procedures for
2 giving, for submitting issues like this --

3 MS. PERRY: And he can come back in September, too,
4 if he wants.

5 CHAIRPERSON GRIFFIS: Clearly so. Okay. That being
6 said, let's remove that and move on. Here's what I'd like to,
7 and I'm sorry I am a little tired, but I'm gaining back strength
8 for our next endeavor.

9 But this is what I'd like to do. I want to give the
10 parties two minutes just to make any closing statements on this
11 Special Exception Case at this time. I will then give you
12 another minute to answer anything that was, needs to be addressed
13 in that sense.

14 So, if you're ready and prepared, we can do that.
15 You can use your two minutes, if you have a question I can answer
16 it as long as it is pertinent. But clearly, it would be more
17 advisable to sum up. So, let us start.

18 MR. KOGAN: Yeah, I'll just briefly reiterate what
19 I said earlier and encourage the Board to consider the
20 Application as a whole, as the Application was made to the Board.
21 And to withhold any judgement until September, after the
22 testimony, the presentation of the case on the parking and the
23 testimony on the parking is provided.

24 CHAIRPERSON GRIFFIS: Good, thank you.

25 MR. DANZIG: Mr. Chairman, this is a, my

1 observation would be this is a real expansion. It includes a new
2 facility. I take your observation to suggest that it's possible
3 that four beds could be added within the building and I think
4 that would be much less objectionable.

5 The building of a new facility creates, in addition
6 to the four beds, a kitchen and a living area. It adds, it
7 diminishes the green space on the lot by some two percent of what
8 the green space was beforehand.

9 It is objectionable to us. Beyond that, you should
10 not be encouraging, in my view, expansion of an institution in
11 this circumstance, given the strong feeling of the neighborhood
12 about the institutional environment, and particularly given the
13 record of this institution in using that expansion to bootstrap.

14 Finally, I would suggest there is no good reason
15 for rushing ahead to embrace this at the moment. You may want to
16 consult Corporate Counsel with regard to this. You can make your
17 own judgements, obviously. But in our view, as a neighborhood,
18 there is not a reason for embracing this project piecemeal.
19 Thank you.

20 CHAIRPERSON GRIFFIS: Okay. Mr. Keys.

21 MR. KEYS: The Board can take a look at the
22 exhibits and can see that there is not the surplus of space that
23 Mr. Danzig referenced. We are adding a corridor and we're adding
24 four bedrooms and that is all, patient rooms.

25 The Special Exception process exists to establish

1 objective standards which the Applicant needs to satisfy. If it
2 meets those standards it is entitle to the relief. And the
3 record supports the hospice addition as an acceptable enlargement
4 of the facility.

5 And I would encourage the Board, at its next
6 business meeting, to take this matter up for decision.

7 CHAIRPERSON GRIFFIS: Thank you. Okay. And I
8 would agree, I actually pulled out the plans when the statement
9 was made. And clearly what we've shown in evidence and therefore
10 what is before us for Special Exception is a corridor and four
11 bedrooms.

12 MR. DANZIG: And I apologize, Mr. Chairman, I see
13 in the note here that it is contiguous kitchen area, and
14 therefore would be in the original building.

15 CHAIRPERSON GRIFFIS: Indeed. Okay. Now, that
16 being said, it's up to us members to decide what we're doing
17 today. I would propose this. In light of the evidence and the
18 cases that were presented to us, I would like to set this for
19 decision making on August meeting.

20 And I think there are some things that we need to
21 deliberate on, on our own. I'm not sure that we need additional
22 submissions, however some were spoken about, so we can quickly
23 identify those.

24 However, I am open to being persuaded otherwise and
25 acting today, as along as that persuasion can take place in about

1 two and a half minutes. So, comments?

2 MR. ETHERLY: Mr. Chairman, I'm inclined to move
3 forward on this matter today. I'll tell you why. We've talked
4 extensively about the difficulty of this matter, both
5 procedurally and substantively, in terms of the issues that have
6 been raised.

7 But I believe that the Applicant's case,
8 specifically as it relates to the factors pertaining to
9 expansion, have been clearly laid out. And I would be prepared
10 to entertain and support a motion to approve this portion of the
11 Application.

12 CHAIRPERSON GRIFFIS: Good, thank you. Others?

13 MR. MAY: With regard to the decision making, I'm,
14 I'm very glad that we've heard the full testimony on this portion
15 of the case. And I think it is logical to separate it and
16 separate what should be a straightforward consideration from the,
17 the thornier problem associated with this case.

18 I, but I don't feel the urgency to vote and decide
19 this issue most immediately. I think that August is appropriate.

20 But if there's, even in that circumstance there is a sense of
21 urgency that seems to be lacking on the part of the Applicant.
22 I'm, I know that there is the issue with the expiring Certificate
23 of Need, but it's also clear that, apparently that they have to,
24 they'll need an extension for that anyway.

25 They want to do it with Building Permit in hand,

1 is, that seems to be the only rationale for an early decision.
2 Is that enough for the Board to make this decision? That's, I
3 don't know.

4 MR. ZAIDAIN: I agree with Mr. May. I think we
5 should call off the dogs. You mentioned, Mr. Chair, something
6 about more submissions. I don't, do you, can we ask the staff or
7 whatever what those may be?

8 I don't recall additional information we would
9 need, but I'm not ready to move forward today on this. I'd
10 rather hold off until August.

11 MR. ETHERLY: Mr. Chair, if I may, while we're kind
12 of talking, let me just put a little more meat on my bone and,
13 you know, prepare to support the Board in whatever direction it
14 wants to go.

15 And here, I don't want to make a big point of this,
16 but once again, be an advocate of judicial efficiency. I think
17 we've done everything that we can do with this particular aspect
18 of the case.

19 It's my sense that the big bone that's going to be
20 very difficult for Mr. Keys and his Applicant, is going to be
21 working with this parking issue. I think it's very clear that we
22 have some significant questions that remain unresolved in that
23 particular regard.

24 So I don't necessarily see that as a very easy base
25 hit, much less a home run at this particular juncture. But when

1 taking a look at the factors that are laid out in 219.1 et al., I
2 believe that we've adequately explored a number of the issues as
3 they relate to the addition.

4 I would also highlight if there are any concerns
5 regarding impact in terms of the work force. The ANC and other
6 parties have done well, I think, to highlight some, I don't want
7 to say inconsistencies, but some statements in the record that
8 would seem to suggest that there might be an accompanying
9 expansion or, in terms of staff or vehicles.

10 But I will note that in the Certificate of Need
11 Report on Page 6, there is a note that inpatient services can
12 also be provided more cost efficiently since the hospice can
13 operate an additional four beds through the use of one additional
14 RN per shift.

15 That, in addition to only four required parking
16 spaces being added as a result of the addition of the four beds,
17 gives me a certain measure of comfort that would rebut the
18 concern that was raised by the ANC and the party that the
19 expansion, in and of itself, will lead to an additional traffic
20 impact.

21 I, unfortunately I just don't see it at that
22 particular, on that particular front. But once again, when you
23 take a look at 219 in its entirety and in particular, I'll take a
24 look at 219.5 which speaks to the adverse impact on the
25 neighborhood because of traffic noise operations. Clearly once

1 again we're walking a fine line here because we bifurcated these
2 issues.

3 But I believe it's, it's more than appropriate to
4 move forward on this particular front, and still have some very
5 significant and unresolved questions that need to be dealt with
6 by the Applicant as it relates to the parking lot and the
7 construction work attendant to that particular component.

8 But that being said, once again I'd be comfortable
9 in holding off until August, as it would appear to be clear that
10 I don't have a majority of my colleagues, at this particular
11 juncture.

12 But I just wanted to put a little more meat on that
13 bone, so it's clear why I'm prepared to move forward today.
14 Thank you, Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Thank you very much. Then I
16 think we should set this for decision making on August 1, or
17 rather August 6th.

18 MR. DANZIG: Mr. Chairman, thank you, the level of
19 care is very impressive here.

20 CHAIRPERSON GRIFFIS: Can we just give an
21 indication of what, what case this is on the decision making, if
22 you know. Just to give an idea of where we are with that?

23 MS. BAILEY: Let me see. Okay, for August 6th, the
24 Public Hearing starts at 9:30, and this would be the third case
25 for decision on that day, Mr. Chairman.

1 CHAIRPERSON GRIFFIS: Good.

2 MS. BAILEY: The other ones are the Embassy of
3 Algeria, and there's a Community Service Center -- well, actually
4 this is the second one.

5 CHAIRPERSON GRIFFIS: Okay. Well, be that as it
6 may, second or third case in the morning. Obviously we don't
7 have any other additional testimony at that time, so if people
8 are present you will know it will go a lot faster than it did
9 this morning.

10 However, there is no requirement for people to be
11 here. With that, I thank you all for patience again.

12 MS. PERRY: Can I just ask one question on
13 procedure?

14 MS. BAILEY: Prior to, Ms. Perry, please Mr.
15 Chairman --

16 CHAIRPERSON GRIFFIS: Yes.

17 MS. BAILEY: -- could we just clarify where we will
18 start in September, so that can be clear.

19 CHAIRPERSON GRIFFIS: That would be an excellent
20 idea. I believe we're starting again on the same procedure we
21 did today, but going over the parking.

22 MS. BAILEY: So we'll start with the Office of
23 Planning?

24 CHAIRPERSON GRIFFIS: Correct.

25 MS. BAILEY: On September 10th.

1 CHAIRPERSON GRIFFIS: Is that everyone's
2 understanding?

3 MR. DANZIG: And I think you wanted to be clear
4 that you wanted a Transport Office person here.

5 CHAIRPERSON GRIFFIS: Office of Planning?

6 MR. DANZIG: Transportation.

7 CHAIRPERSON GRIFFIS: Yes, yeah. We're going to
8 leave that responsibility to Office of Planning to coordinate.

9 MR. DANZIG: Thank you.

10 CHAIRPERSON GRIFFIS: They're not here. Okay.
11 Anything else? Question, Ms. Perry?

12 MS. PERRY: I just had a question.

13 CHAIRPERSON GRIFFIS: Yes.

14 MS. PERRY: Normally when we do Special Exception
15 cases, before your decision making process we submit findings of
16 fact, conclusions of law, that kind of thing. Are we still
17 supposed to do those in this case?

18 CHAIRPERSON GRIFFIS: That's an excellent question.

19 MS. PERRY: Sorry I asked it but, more work for us.

20 CHAIRPERSON GRIFFIS: I don't have any problem with
21 that. Mr. Keys, do you have --

22 MR. KEYS: I have no problem with it. I think you
23 should probably set a firm date those need to be submitted.

24 CHAIRPERSON GRIFFIS: Well, we will. Now that
25 that's established, we will have the submission. And we'll have

1 that submission also by the parties and the Applicant. Let us
2 have staff which is able to set dates for us give us an
3 indication of when those are due.

4 MS. BAILEY: Mr. Chairman, I would suggest two
5 weeks prior to August 6th. And that would be July 22nd. Would
6 that be agreeable, Mr. Keys and to the parties?

7 MS. PERRY: Would we have the transcript from this
8 Hearing by then? Because it takes about three weeks. We're
9 still waiting for the June 25th one to come back.

10 CHAIRPERSON GRIFFIS: Perhaps maybe invest in a
11 pocket tape recorder.

12 MS. BAILEY: Would July 29th, be more comfortable
13 for you?

14 MS. PERRY: If we can get the transcript, yeah.
15 Mr. Keys has just indicated he'll make a copy of the transcript
16 available to the ANC, and we'll be happy with that.

17 MS. BAILEY: So you're going to expedite it, Mr.
18 Keys?

19 MR. KEYS: I'm not sure what you're asking me?

20 MS. BAILEY: The discussion is it normally takes
21 about two to three weeks for the transcript to become available.

22 Expediting it would mean that you would contact the Recorder and
23 have it expedited.

24 MR. KEYS: I've got the transcript of the June
25 Hearing now.

1 MS. PERRY: I'm talking about this one.

2 MS. BAILEY: Yeah, we're talking about this
3 Hearing.

4 MR. KEYS: Oh, I can't do a thing about that.

5 MS. BAILEY: Okay. July 29th, Mr. Chairman, for
6 the findings of fact?

7 CHAIRPERSON GRIFFIS: Absolutely. Good. Anything
8 else? Everyone clear? Dates, submissions? Very well, we'll see
9 you in August, we'll see you in September. Thank you very much.
10 Mr. May, thank you very much. Let's see if someone else is
11 available. Yes?

12 MR. FINNEY: This maybe out of order, Mr. Chairman
13 --

14 CHAIRPERSON GRIFFIS: If you wouldn't mind, just to
15 get on the --

16 MR. FINNEY: On September 10th --

17 CHAIRPERSON GRIFFIS: I just need you to talk in
18 the mic, that's all.

19 MR. FINNEY: On September 10th, Mr. Chairman, I had
20 the impression that you had set aside that day to conclude the
21 St. Patrick's case. That you said we shall delegate or allocate
22 the whole day to settle that case.

23 CHAIRPERSON GRIFFIS: Well, I seem to remember
24 saying that.

25 MR. FINNEY: Yes, you did, sir.

1 CHAIRPERSON GRIFFIS: Who else is in charge of this
2 schedule? That's an excellent point. Let me, let's transition
3 here. We're going to call the next case. We'll bring up that
4 scheduling issue as we transition in and we're not actually in
5 the next case. The issue of September 10th scheduling is in fact
6 the entire day has been set aside for St. Patrick's and The
7 Washington Home.

8 The Washington Home is going first, in the morning,
9 at 9:30, and we will clarify that. What is left for The
10 Washington Home is, I hate to say, will not be that time
11 consuming, but it is not anticipated to be that time consuming,
12 as we've had the entire case presented and we have two parties.

13 As you've seen here this afternoon, the entire
14 Special Exception, granted we're at a late hour, it did take just
15 about an hour and 15 minutes to do. So, with that, I think we
16 will be able to get through that.

17 And the rest of the entire day for the 10th, I
18 guarantee you, as staff is my witness, we will not put anything
19 else on the 10th, no matter how people beg and plead. It seems
20 to be a popular day. Okay, with that, why don't we get everyone
21 organized.

22 My Board is transitioning. We have another Zoning
23 Commission in. So, we're going to take two minutes to get ready
24 and we're going to ask everyone else to take that time to get
25 ready also, and come in and do this.

1 I would anticipate at this time we could
2 conceivably go towards 8:00.

3 (Whereupon, the foregoing matter

4 went off the record at 6:08 p.m. and

5 went back on the record at 6:18 p.m.)

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E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:18 p.m.)

CHAIRPERSON GRIFFIS: Okay staff will call the last case of the afternoon for the record, but before that, first of all, it goes without saying, I appreciate everyone's patience. Clearly, this is not something the Board enjoys doing, going this late and we did everything in our control to move faster.

So, we will jump into this. We will get through as much as we can tonight. At this point, I do not want to go beyond 8:00. I think we will try and look to where we can stop with some logic in this, and take up the next date.

One, just out of respect for all of your time, and not keep you here all night. Two, we will go at 8:00 on to about twelve hours of hearings for the Board, and so I think we will of diminished capacity in understanding everything that is saying.

So, that being said, why don't we call a case and move ahead with it.

MS. BAILEY: Application number 16852 of Saint Patrick's Episcopal Day School, pursuant to 11 DCMR 3104.1, for a special exception to allow a private school having 60 students, grades seven through nine, under section 206, in an R-1-B District at premises 4925 MacArthur Boulevard, N.W. (Square 1393, Lot 823).

Is there anyone in the audience who will be testifying today who was not sworn in previously?

1 CHAIRPERSON GRIFFIS: Do you want to stand?

2 MS. BAILEY: Do you solemnly swear or affirm that
3 the testimony you are about to give in this proceeding will be
4 the truth, the whole truth and nothing but the truth.

5 (All are sworn in).

6 MS. BAILEY: Thank you. Mr. Chairman, when we last
7 left, for picking up today, the Applicant's Architect, the Sound
8 Person, the Sound Man, ought to be cross examined.

9 In addition, Mr. Marty Wells, the Traffic Engineer,
10 may be called back, based on the new information that was filed.

11 And the Headmaster of the school, Mr. Peter Barret may be called
12 back as well.

13 And there after, we will move to the Office of
14 Planning and that's the sequence that I have, Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Okay. And the Board will
16 give up their dinner break as we move on. So, let us go to the
17 architect first. I believe we established that we would have
18 each witness cross examined at a time, correct?

19 So, we'd have the architect come to the table and
20 then we have already established the order of cross examination,
21 which begins with the ANC with Neighbors United, Lovendusky and
22 Skrivseth.

23 MS. PRINCE: One small matter, the architect does
24 need to leave at quarter of seven, if we aren't for some reason
25 enabled to complete his cross examination, he will return on

1 September 10th, but perhaps we can use this as a goal to finish
2 our cross examination.

3 CHAIRPERSON GRIFFIS: Okay. Indeed. And that
4 would give us, oh, twenty minutes. Is that correct? Okay.
5 Good.

6 MS. GATES: Chairman Griffis, Members of the Board,
7 good afternoon Mr. Konapelsky, my name is Alma Gates, and I
8 reside at 4911 Ashby Street, N.W. Is there anything in your past
9 experience designing schools that would be similar to Saint
10 Patrick's proposed renovation of a victorian residence?

11 MR. KONAPELSKY: Yes, I worked on an addition, a
12 handicapped addition to Blessed Sacramento School in Northwest,
13 Washington. I worked on several historic buildings. There's
14 Glen Brook Mansion in Rockville, which is a similar project where
15 we retrofit a --

16 MS. GATES: I was talking about schools.

17 MR. KONAPELSKY: I guess Blessed Sacrament would be
18 the best example.

19 MS. GATES: Am I correct in understanding your
20 planning to eliminate the two fire escapes and replace them with
21 a fire safety tower?

22 MR. KONAPELSKY: I don't know if fire safety tower
23 is the correct word, but it's a --

24 MS. GATES: Life safety tower.

25 MR. KONAPELSKY: Life safety tower, yes, and we do

1 feel that the existing fire escapes are rusty, undersized, and
2 part portioned of the egress path from the second floors on top
3 of the roof. So, if it's raining or snowing, it's unsafe.

4 So, yes, we are trying to eliminate those features.

5 MS. GATES: Using your drawing under exhibit A, the
6 proposed first floor plan, would the students in the two class
7 rooms in the southwest corner of the building be able to access
8 the life safety tower in the southeast corner?

9 CHAIRPERSON GRIFFIS: Before we go too far into
10 that I need a little assistance in seeing how it goes directly to
11 the zoning issues. It seems to me, you're going into some of the
12 code and life safety issues.

13 MS. GATES: I didn't realize I was totally limited
14 to only zoning issues.

15 CHAIRPERSON GRIFFIS: Well, you're limited only in
16 the fact of their worthiness, or their worth, because other than
17 that, we have no jurisdiction over any of the building codes --

18 MS. GATES: Safety is not an issue?

19 CHAIRPERSON GRIFFIS: It is not something that we
20 have jurisdiction over.

21 MS. GATES: Thank you.

22 CHAIRPERSON GRIFFIS: It certainly is an issue.

23 MS. GATES: Okay. Would ADA requirements be
24 considered?

25 CHAIRPERSON GRIFFIS: No. And those would, those

1 have jurisdictions which will be reviewed, clearly, in part of
2 the permitting process. So, it's not as if it's exempt, but even
3 if we found some glaring observation, there's nothing that we
4 could do about it.

5 In fact, not to belabor it, but this morning I
6 think we evidenced the building that needed two means of egress
7 and only was providing one.

8 MS. GATES: Well, that's where I was going with
9 this.

10 CHAIRPERSON GRIFFIS: Indeed. And we can point
11 that out, if we had time. But again, there's nothing that we can
12 even follow up in doing. Certainly, with a registered architect
13 and the permitting process in review, I would hope, I know for
14 certain, that that will be addressed.

15 MS. GATES: Thank you. Are there plans to enclose
16 the terrace in the future?

17 MR. KONAPELSKY: Are we talking about on the second
18 floor, on the porch area?

19 MS. GATES: No, I'm talking about the terrace in
20 the front.

21 MR. KONAPELSKY: No, we are not planning on
22 enclosing that. That hasn't been discussed.

23 MS. GATES: But is the terrace included in the
24 footprint?

25 MR. KONAPELSKY: In the overall footprint, when we

1 calculated percentage of lot occupancy, yes, but not in the
2 usable footprint. In other words, it's not a functional space,
3 or a place where we calculated student populations. It's an
4 exterior space.

5 MS. GATES: Couldn't the school later build on it
6 and substantially increase the size of the building?

7 MR. KONAPELSKY: Yes, they could. If they wanted
8 to.

9 MS. GATES: Okay.

10 CHAIRPERSON GRIFFIS: Meaning, they have addition
11 FAR, that they could enclose that space?

12 MR. KONAPELSKY: The lot allows forty percent lot
13 occupancy. If they wanted to, and pursued the right channels of
14 the permit process, they could do that.

15 CHAIRPERSON GRIFFIS: Okay. But your client hasn't
16 asked you to investigate that, in terms of architectural plans or
17 proposed schemes, or have they?

18 MR. KONAPELSKY: No, not at all.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. KONAPELSKY: Actually, other than the life
21 safety addition, they were very vehement about staying within the
22 footprint of the building.

23 CHAIRPERSON GRIFFIS: I see. Okay.

24 MS. GATES: That would stay within the footprint.

25 MS. PRINCE: And of course, Board of Zoning

1 Adjustment approval would be required for any enclosure of the
2 existing porch, even though it's part of the footprint.

3 CHAIRPERSON GRIFFIS: It would, why?

4 MS. PRINCE: Because it increases the habitable
5 space for the use of the school.

6 CHAIRPERSON GRIFFIS: Indeed. Is that understood?

7 MS. GATES: It is, however, I believe, when the
8 classroom building was enlarged, or upgraded recently, the plans
9 to do that had already been drawn. The planning was there
10 earlier, and that was where I was going with this question.

11 But perhaps we were going to say this is part of
12 the footprint and come back later and say oh well we said it was
13 part of the footprint.

14 CHAIRPERSON GRIFFIS: Right. Understood.

15 MS. GATES: Thank you. Is there concern about
16 survival of any of the trees on the property?

17 MR. KONAPELSKY: When we did the life safety
18 addition, there was a discussion from Saint Patrick's that they
19 were, it was critical to keep the existing trees on site.

20 And there is an existing Magnolia tree, and I
21 noticed that there was a paper that came across today about an
22 Arborist had looked at the Magnolia tree.

23 But when were looking at our life safety addition,
24 we took that into consideration and the general rule, when your
25 doing an addition on a schematic level, is to go outside the drip

1 line of a tree which we've, I believe we're over about six to
2 eight inches in the drip line.

3 Also, we talked to an arborist, at the time we were
4 doing an addition on that side of the building. The addition is
5 located on the south side of the building, mainly because of how
6 it works with the interior of the building.

7 It's a good place for egress. It's remote from the
8 existing stairs, so it makes a lot of sense to put it where it
9 is, architecturally. And I believe, given the information we
10 have on a schematic level, given construction methods of
11 excavating from the other side, there's a means of getting to the
12 construction from the back side.

13 You don't need to go over the roots to get to the
14 construction. So, I believe, based on experience I've had with
15 trees, in relationship to retaining walls and other such
16 foundations, that this would work and I think if we work with an
17 arborist, we could probably save that tree.

18 And that's our full intent. And also, I might add
19 that on a schematic level, there is still some ability, after
20 working with an arborist and getting a very fine tuned sight
21 plan, we could move the addition slightly, if we need to move it
22 a foot or so.

23 I think there's room to do that also.

24 CHAIRPERSON GRIFFIS: So there's one tree that may
25 be impacted and it's your intention and direction to make

1 provisions to protect that tree?

2 MR. KONAPELSKY: Yes.

3 CHAIRPERSON GRIFFIS: Good.

4 MS. GATES: I hate to belabor this, but what about
5 the Beech tree?

6 CHAIRPERSON GRIFFIS: Is the Beech tree impacted?
7 Is that your question?

8 MS. GATES: If they work from the back, it will be.

9 CHAIRPERSON GRIFFIS: No, no, that's the question
10 right?

11 MS. GATES: Yes.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. KONAPELSKY: I'm not sure which tree is the
14 Beech tree.

15 CHAIRPERSON GRIFFIS: Is the Beech tree showing on
16 this?

17 MS. GATES: It's the large tree in the upper left
18 hand corner picture.

19 CHAIRPERSON GRIFFIS: That's in back of the
20 proposed trash enclosure?

21 MS. GATES: No, it isn't. It is in the same ground
22 area as the trash enclosure. Well, why don't you look at the
23 picture, Ms. Prince.

24 CHAIRPERSON GRIFFIS: Well, is that the --

25 MS. GATES: No, I'm talking about the photograph.

1 So you can really see the tree. That's it.

2 CHAIRPERSON GRIFFIS: Where is it on the --

3 MS. GATES: And that's where the trash enclosure
4 would be, but it is very enclosed to the proposed --

5 CHAIRPERSON GRIFFIS: I don't think so, is it?

6 MS. GATES: Yes sir, I have lived here for 38
7 years, I know the tree well.

8 CHAIRPERSON GRIFFIS: Very well.

9 MR. KONAPELSKY: Based on the scale --

10 CHAIRPERSON GRIFFIS: I just need clarification
11 that's all.

12 MR. KONAPELSKY: Excuse me, based on the scale of
13 the parking spaces, it's a minimum of 20 feet, 20 to 30 feet from
14 that tree. There's existing blacktop around the tree now, and
15 given the fact of getting access to additions on a typical city
16 block, when your doing an addition on the back of a house, you'd
17 probably have equal, as much room, as this, to get around the
18 construction site.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. GATES: Thank you.

21 CHAIRPERSON GRIFFIS: So, you don't see it as
22 impact to the Beech tree, and the Beech tree is on the sight
23 plan, the one Mrs. Prince was talking to, which is just in back
24 of the proposed trash enclosure?

25 MR. KONAPELSKY: Correct.

1 CHAIRPERSON GRIFFIS: Okay.

2 MS. GATES: Turning to the parking lot. Would some
3 cars, in your parking plan, would some cars have to back out of
4 the lot?

5 MR. KONAPELSKY: On the site plan that's shown up
6 here, we have 90 degree parking, and there's a total of 17
7 spaces, and it wouldn't require cars to back out.

8 MS. GATES: How would they, once they got in there,
9 that's a fairly tight space, how would they turn around?

10 MR. KONAPELSKY: It actually isn't a tight space,
11 it's a typical parking lot, with 19 foot space, 20 foot drive
12 aisle, 19 foot space, there's a six foot back up area with
13 additional, I guess wheel base area of two feet. So you have six
14 feet to back up.

15 MS. GATES: What about tandem parking?

16 MR. KONAPELSKY: In this latest lay out, we don't
17 have tandem parking.

18 MS. GATES: Well, we've heard a lot about it, so if
19 we did have tandem parking would they have to back out? Would
20 trucks just pulling in for a delivery have to back out?

21 MR. KONAPELSKY: They could turn around. I guess
22 in reference to that, there's several issues. One is in a
23 typical tandem space, we looked at that, because it came up in
24 the last meeting, and it's about eight turning radius, eight
25 turning moves, that you need to get out of a tandem space.

1 But in my mind, there's, it happens all the time,
2 to back out of a space. I don't think we need to do it.
3 Certainly, they could back into the spaces, if they were tandem
4 parking spaces.

5 There's space around the handicap area to maneuver.
6 There's a 20 foot drive aisle. I think there's ample space
7 within the site to park cars.

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. GATES: Well, then I will not go further with
10 tandem parking if they feel that there will be no tandem parking.

11 CHAIRPERSON GRIFFIS: What being shown is the
12 current proposal for the parking lay out, correct?

13 MR. KONAPELSKY: Correct.

14 CHAIRPERSON GRIFFIS: And it does not include
15 tandem parking?

16 MR. KONAPELSKY: It does not. And to my knowledge
17 we're required to have 14 spaces, and we have 17.

18 CHAIRPERSON GRIFFIS: Indeed.

19 MS. GATES: Where do you plan to place the heating,
20 ventilating, air conditioning equipment?

21 MR. KONAPELSKY: The scale of the building is such
22 that I think we can zone the building. Again, I'm not a
23 mechanical engineer, but I would think that we could zone the
24 building.

25 Put some interior mechanical equipment in the attic

1 space, and then probably have a series of exterior units around
2 the building. Probably zone the building by floor, and I believe
3 that's what's in use right now with the site, there's several --

4 MS. GATES: What about any, so you're saying that
5 all the equipment would be housed in the building?

6 MR. KONAPELSKY: No, it's a split system which
7 means that there's a air handler unit inside, which needs to be
8 located inside in a closet or in attic space. Then there's an
9 exterior unit, which is the fan coil unit.

10 MS. GATES: And where would the exterior units be
11 placed?

12 MR. KONAPELSKY: Some where around the perimeter of
13 the building. Probably either, grouped together with a buffer,
14 or split up around the building.

15 MS. GATES: What additional impacts on neighbors
16 would be evident from the new equipment, in terms of noise,
17 visual impacts, emissions, etcetera.

18 MR. KONAPELSKY: I would say, given the lot size,
19 there's sufficient room to buffer it with landscaping, with
20 plantings and what not. And I don't think it would impact the
21 neighborhood really anymore.

22 The size of the building isn't increasing that
23 greatly other than the stair and the elevator, so I think it
24 would probably be, it's definitely going to be larger because of
25 the use group. Not the use group, but the occupants, then what's

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1 in their now, but it's going to be very similar.

2 MS. GATES: Just one more question. How far out
3 from the existing building, the existing wall, will the life
4 safety tower extend?

5 MR. KONAPELSKY: It's approximately 21 feet five
6 inches to the face of the bay.

7 MS. GATES: And then how far would that be from the
8 Beech tree?

9 MR. KONAPELSKY: I would say roughly twenty four
10 feet.

11 MS. GATES: Thank you. I have no more questions.

12 MR. FINNEY: I just have a few questions sir. How
13 long is it going to take to remodel this building so that it can
14 be made into a school?

15 MR. KONAPELSKY: If things are done efficiently, it
16 could be six months, or it could take up to a year I would say.

17 MR. FINNEY: Is part of the major, a major part of
18 the work, the new safety tower?

19 MR. KONAPELSKY: Yes, that is most of the work.
20 One of the reasons why I think St. Patrick's liked the building,
21 and we had gone through in the feasibility study, is that the
22 building is in very good shape.

23 So I think a lot of the walls are in very good
24 shape and the plaster and the structure. So I don't think
25 they'll need to be much attention paid in the scheme of things

1 compared to the new construction for the inside.

2 MR. FINNEY: You earlier described the current fire
3 escape as rusted and maybe some of the access obstructed. Am I
4 correct?

5 MR. KONAPELSKY: The access isn't obstructed, but I
6 think it's an unsafe condition when you need to egress a building
7 to the elements.

8 Like, if a child, I guess by all rights, since the
9 building is an educational use, you can go in there with another
10 educational use, and I just picture a child with a handicap, or
11 having a, problems walking or something, getting out on that roof
12 in the ice, which is the problem.

13 MR. FINNEY: Basically, you find it unsafe, as a
14 fire escape for a school. Is that correct?

15 MR. KONAPELSKY: That's correct.

16 MR. FINNEY: Has the school approached you about
17 the possibility of occupying this building using the current fire
18 escape.

19 MR. KONAPELSKY: No, I think their intention also,
20 was to aesthetically improve the building. If you look on the
21 side elevation there's, the ladders are on the side. There's
22 several egress doors.

23 There's doors on the second floor, and I think they
24 want to also, their goal is to improve the look of the building
25 architecturally.

1 MR. FINNEY: So, you're saying they have not
2 approached you?

3 MR. KONAPELSKY: No, the intent is not to keep,
4 from the beginning it wasn't to keep the existing fire escape.
5 Also, if you address handicap --

6 MR. FINNEY: I'm thinking, sir, if they get under
7 certain time constraints, in terms of the need to occupy the
8 building, have they explored the possibility of occupying the
9 building without the new fire escape?

10 MR. KONAPELSKY: They haven't explored that, no.

11 MR. FINNEY: Run off. You have a lot of roof
12 surface there, and you have paved parking lot. What are you
13 going to do with all that water?

14 MR. KONAPELSKY: My engineers had done a study,
15 which I believe is in the paperwork that you can look at, and
16 they had several solutions for inlets and down spouts, and we
17 would work with their information to connect our down spots.

18 Architecturally, we're concerned with the roof, and
19 they'd be concerned with the site itself.

20 MR. FINNEY: Have you thought of the possibility of
21 a permeable surface for the parking lot?

22 MR. KONAPELSKY: No, that hasn't come up.

23 MR. FINNEY: May I plant that idea in your mind?

24 MR. KONAPELSKY: Yes.

25 MR. FINNEY: That's all Mr. Chairman.

1 CHAIRPERSON GRIFFIS: Thank you very much. Okay,
2 we have three more minutes with this witness.

3 MR. SKRIVSETH: I cannot possibly complete my
4 questions in three minutes sir.

5 CHAIRPERSON GRIFFIS: Can you? Okay. Let's take
6 you first then.

7 MR. LOVENDUSKY: Good afternoon, Michael
8 Lovendusky, opponent to the Application. Sir, I don't understand
9 your answers with regard to the heating, ventilation, and air
10 conditioning equipment.

11 Have you, or have you not made any plans for
12 changing the heating ventilation and air conditioning equipment?

13 MR. KONAPELSKY: As part of the feasibility study,
14 we had an engineer look at the building and make a general
15 summary of what was required. What's required is more than
16 what's there.

17 But again, I'm not a mechanical engineer, so I
18 can't say how big these units will be. I would, based on my
19 experience, I would think they'll be several units on the
20 perimeter of the building, and the scale of them is such that
21 they can easily be screened for noise and also visual, you know,
22 disruption.

23 MR. LOVENDUSKY: Where would they be located on the
24 perimeter of the building?

25 MR. KONAPELSKY: That's to be determined. The

1 mechanical engineer needs to establish how they run inside the
2 building. There's a refrigerant line that has to be run from the
3 exterior to the interior unit, which typically, is less than 50
4 feet.

5 So, it depends on how the inside lays out. We
6 certainly will do our best to locate them where they make sense
7 and where they'll have the lowest impact.

8 MR. LOVENDUSKY: Since you do not know either the
9 variety of the equipment or it's precise location of such
10 equipment, then your opinions about the ability to buffer it is
11 purely speculative. Is that correct?

12 MR. KONAPELSKY: No, I'm basing this on years of
13 experience of what I know the size might be, working with
14 engineers, how typically these things are, you know. We could
15 probably put everything on one side of the building.

16 We could split it up. It's up for discussion at
17 this point in time. It's a schematic design issue in my mind.

18 CHAIRPERSON GRIFFIS: I think the issue is he, and
19 I understand the question, and I think it's an important one, so
20 let me see if I can get quick clarification for everyone involved
21 here.

22 And that is, you can estimate, essentially, the
23 size of these condensing units on the exterior of the building.
24 Estimate size, in terms of physical size and in that estimation,
25 you can say that it can be screened from visual and sound impact

1 at this time.

2 Meaning, the difference between a more residential
3 sized unit as opposed to a commercial sized unit. Is that
4 correct?

5 MR. KONAPELSKY: That's correct. But --

6 CHAIRPERSON GRIFFIS: But you don't know exactly
7 the size, because the mechanical engineer will have to do that,
8 and the exact location will be dependent on how the system, the
9 mechanical system will be laid out in the building. Is that
10 correct?

11 MR. KONAPELSKY: That's correct. They could be as
12 small as maybe three foot by four foot.

13 CHAIRPERSON GRIFFIS: It may be more on a
14 residential, several residential --

15 MR. KONAPELSKY: Exactly.

16 CHAIRPERSON GRIFFIS: Okay. So the point that we
17 can get from you, right now, is that it's your testimony that
18 these could be screened for sound and visual impact. And outside
19 of that, the rest is, fairly speculative, because it hasn't be
20 designed.

21 MR. KONAPELSKY: And I think if the goal is to get
22 them on one side of the building or to split them up, or to make
23 them as small and as efficient as possible, we can put that on
24 the top of our list when we do that part of the project.

25 CHAIRPERSON GRIFFIS: Okay. And are there existing

1 condensers on the site?

2 MR. KONAPELSKY: Yes there are.

3 CHAIRPERSON GRIFFIS: And how many?

4 MR. KONAPELSKY: I think there are three. I'm not
5 sure.

6 CHAIRPERSON GRIFFIS: And their location? If you
7 don't know, you don't know, but if you know it would be helpful.

8 MR. KONAPELSKY: I believe they're on the Ashby
9 Street side of the building, and I think there's one on the lawn
10 side of the building.

11 CHAIRPERSON GRIFFIS: Indeed. On the Ashby side on
12 grade?

13 MR. KONAPELSKY: No, there's a walkway that goes
14 from the parking lot. You can see up here on the lower left
15 corner, to the front door, if you will, of the porch. And I
16 believe they're over there.

17 CHAIRPERSON GRIFFIS: So there's, on those two
18 locations, the front, and the back. And the only reason why you
19 can't talk is because they don't have a mic over there for you to
20 be on the record. So, okay. Follow up questions on those?

21 MR. LOVENDUSKY: With regard to the life safety
22 tower, would you say, what is the, are the plans for the school's
23 population require a life safety tower of the dimensions that are
24 planned?

25 MR. KONAPELSKY: The life safety tower is based on

1 the Book of Code, so it is a minimum. The one, if you will,
2 larger area, is the bay window which is meant architecturally to
3 tie in with the existing building.

4 We don't need to provide a bay window in the fire
5 escape, but the rest of the fire escape is based on the Book of
6 Code so it is a minimum size.

7 MR. LOVENDUSKY: That is a minimum size for 60
8 students and a staff of 14?

9 MR. KONAPELSKY: Stairs are actually sized for,
10 there's a minimum width requirements, 44 inches, there are
11 minimum landing requirements for any building. If there was, if
12 this was two more floors it would be the same type of layout as
13 far as minimums are concerned. There's minimum egress width
14 based on population.

15 MR. LOVENDUSKY: Is the life safety tower that is
16 planned consonant with the residential character of a building?

17 MR. KONAPELSKY: I believe very much so. When you
18 think about adding a life safety tower, which is a stair which
19 needs a two hour rated enclosure and an elevator, which is
20 basically a solid mass.

21 I think we've made a very good attempt at
22 delineating the basemittal top. We're using slate on the roof of
23 the building to tie into the existing, which you typically
24 wouldn't see an elevator tower.

25 We're using some cornice work in tying into the

1 existing building. So I think, given the fact that we're working
2 with a stair and an elevator, it has a very residential quality.

3 MR. LOVENDUSKY: You mentioned a familiarity with
4 Blessed Sacrament. Do you have a familiarity with any other
5 school projects as an Architect?

6 MR. KONAPELSKY: I worked on a Newport school,
7 which actually we got to the point of design. And that was a
8 school that was from kindergarten through twelfth grade. I've
9 worked on several colleges.

10 Cedar Crest College in Pennsylvania, Lehigh
11 University. I've worked for the Naval Academy.

12 MR. LOVENDUSKY: Thank you. Is it unusual for a
13 school not to have a cafeteria or a lunchroom?

14 MR. KONAPELSKY: Oddly, it is. My children go to a
15 small Catholic school in Kensington and they don't have a
16 cafeteria.

17 MR. LOVENDUSKY: Does that school have a first aid
18 station?

19 MR. KONAPELSKY: Yes, they do.

20 MR. LOVENDUSKY: Does that school have any athletic
21 space?

22 MR. KONAPELSKY: Yes, they have an adjacent soccer
23 field.

24 MR. LOVENDUSKY: So, I have no further questions
25 for this witness, though I have one question of the, of you.

1 Yes, sir.

2 CHAIRPERSON GRIFFIS: Wait a minute, I thought I'd
3 laid out the rules, we're not allowed to cross examine the Board.

4 MR. LOVENDUSKY: Just a clarification with regard
5 to safety issues.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. LOVENDUSKY: If there is a safety issue that
8 would affect the adjoining and nearby neighbors to the 4925
9 MacArthur site, that would be a potential objectionable condition
10 that would be within the consideration of the Board of Zoning
11 Adjustments?

12 CHAIRPERSON GRIFFIS: It could be if it grew out of
13 the relief that was being sought or went to the case, absolutely.

14 But in terms of evaluating the inside of the building and such,
15 it wouldn't be.

16 But another clarification on that point, and I'm
17 not sure it's absolutely clear, so I'll say it because I don't
18 assume that it is.

19 When the Architect stated that the size of the
20 stairs have a basic minimum and then the increase of that in the
21 size goes by BOCA, it's actually on the population of the floor
22 which is categorized from the square footage of the entire floor.

23 That has nothing to with what is legally usable in
24 terms of the BZA application. They may be two very dramatic
25 numbers. In fact, I have no idea, but you could have a

1 population available by a code, BOCA code of 400 on that top
2 floor, and those stairs would have to be sized to accommodate
3 that.

4 And that doesn't mean that this, in this order,
5 they would be allowed to have 400 or whatever it is, just for,
6 just to make that clear, because I don't want that coming up
7 again.

8 MR. LOVENDUSKY: Well, then if I may just follow up
9 with one question about that. If in fact there were 25 students
10 and a commensurate number of staff or faculty, would the life
11 safety unit be diminished in size, or could it be diminished in
12 size?

13 MR. KONAPELSKY: No.

14 CHAIRPERSON GRIFFIS: It's at the minimum now,
15 correct? It would only grow, if, and the only way it would grow
16 is if the footprint of that floor grew. Okay. Thank you.

17 MR. LOVENDUSKY: Thank you.

18 CHAIRPERSON GRIFFIS: Okay.

19 MS. PRINCE: We will ensure that Mr. Konapelsky
20 will return on September 10th, so that Mr. Skrivseth has an
21 opportunity to cross examine him.

22 CHAIRPERSON GRIFFIS: Great. We will make a big
23 note. That's where we'll start up again. Okay. let's bring on
24 then the, Mr. Harris, I believe. Is that correct? The next
25 witness to be cross examined.

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1 MS. PRINCE: Scott Harvey? The Sound Engineer?

2 CHAIRPERSON GRIFFIS: What did I say?

3 MS. PRINCE: Harris? Close, H.

4 CHAIRPERSON GRIFFIS: I'm terribly sorry. Indeed,
5 so. Okay, we disrupted our order. No, I'm sorry, ANC's going,
6 fabulous.

7 MR. FINNEY: Your name again, sir.

8 MR. HARVEY: My name is Scott Harvey, and I work
9 for Polysonics Corporation.

10 MR. FINNEY: That's right. Mr. Harvey, you told us
11 about this study you did on noise effects. Isn't that study a
12 little bit out dates now that they've changed the traffic
13 patterns for the aircraft?

14 MR. HARVEY: Well, I don't think so. And the
15 reason being because we did go back after they changed the
16 traffic pattern and remeasured the noise level from the airport.
17 I presume that's what you're talking about.

18 MR. FINNEY: Yes, yes, from National, yes.

19 MR. HARVEY: And, we found that the noise level
20 didn't change significantly with the change of the traffic
21 pattern.

22 MR. FINNEY: Really? I mean, the planes are now a
23 quarter of a mile to the, I mean more than that, a third of a
24 mile to the west and it doesn't reduce the noise on MacArthur
25 corridor?

1 MR. HARVEY: We measured, after the change in
2 traffic patterns, and we were measuring similar noise levels, no
3 drastic difference in noise levels due to traffic fly overs, due
4 to airplane fly overs.

5 We measured levels as high as 81 db, which is
6 actually higher than we measured on the first one so --

7 MR. FINNEY: You said you had an office on
8 MacArthur Blvd.

9 MR. HARVEY: Yes sir.

10 MR. FINNEY: You have not noticed reduced noise in
11 your office, after the shift of the airplanes?

12 MR. HARVEY: Actually, I don't work in the
13 MacArthur Boulevard office, currently.

14 MR. FINNEY: Oh, I see.

15 MR. HARVEY: But, I will say that I worked there
16 for nine years, and while I was there, I, you know, we would
17 sometimes notice the traffic overhead, and most of the time, you
18 just get used to it, so, my experience is, that you get used to
19 the noise.

20 MR. FINNEY: Well, that's my experience too, if I
21 may so sir, and I live right on MacArthur Boulevard. And if I
22 may say so parenthetically, in a form of a question, I have
23 noticed a reduction of noise since the traffic pattern's been
24 changed, haven't I?

25 MR. HARVEY: I can't say, I can't speak for you

1 sir.

2 CHAIRPERSON GRIFFIS: Indeed.

3 MR. FINNEY: Now tell me, when you did these noise
4 studies, where did you place these noise detectors, what do you
5 call them?

6 MR. HARVEY: We call them sound level meters.

7 MR. FINNEY: Sound level meters. Where did you
8 place them specifically on --

9 MR. HARVEY: I will go to the plan, the current
10 site plan, and show you.

11 CHAIRPERSON GRIFFIS: Just put your mic up on that
12 side.

13 MR. HARVEY: We measured in two locations. To
14 orient you, here's MacArthur Boulevard. We measured in this area
15 both times, before and after, and the first time we measured in
16 this area.

17 The first time was at the, during the time when we
18 had students on site, after a lunch break.

19 MR. FINNEY: I'm confused. The first time you
20 measured it, placed your instruments, your sound meters by the
21 backyard, up, the house up Ashby. Is that correct? Yes, right
22 there.

23 MR. HARVEY: That's correct. One of our meters was
24 here and the other meter was in this location.

25 MR. FINNEY: And then you say --

1 MR. HARVEY: To the south, at the southern property
2 line, maybe that's a better way to say it.

3 MR. FINNEY: No.

4 MR. HARVEY: And the this is north, eastern
5 property line.

6 MR. FINNEY: All right, you're right. Why did you
7 put them there?

8 MR. HARVEY: The concern here, is impact of noise
9 on the residential property lines, and we measured as close as we
10 could get to the residential property lines, to see what the
11 impact across the property line would be.

12 MR. FINNEY: In the case of the one on MacArthur
13 Boulevard, so I, how far back from the boulevard did you put that
14 instrument?

15 MR. HARVEY: We were in line with a house. The
16 existing house that's there.

17 MR. FINNEY: The front of the house?

18 MR. HARVEY: Towards to the front of the house,
19 yes. About the front most edge of the house. Not to the porch.
20 There's a porch, but we were set back from that. So we were
21 about the front face of the house.

22 MR. FINNEY: So you were getting maximum noise from
23 MacArthur Boulevard traffic, by the placement of that sound
24 meter.

25 MR. HARVEY: I wouldn't say that.

1 MR. FINNEY: Well, then --

2 MR. HARVEY: Because look --

3 MR. FINNEY: Were you getting more sound there than
4 you were in the one on the eastern location?

5 MR. HARVEY: Well, certainly.

6 MR. FINNEY: Yes.

7 MR. HARVEY: But I wouldn't say maximum sound from
8 MacArthur.

9 MR. FINNEY: Well, I'll retract maximum, I just,
10 more sound, because you're closer.

11 MR. HARVEY: Absolutely. Yes.

12 MR. FINNEY: Now, so that the effect of the, all
13 that noise that you talk about, from MacArthur Boulevard was sort
14 of shielding out, or overcoming the noise of the playful
15 children. Is that correct?

16 MR. HARVEY: No, I didn't say that.

17 MR. FINNEY: Let me go into logarithms.

18 MR. HARVEY: I think what we were saying was the
19 noise level from the children was no louder than the noise level
20 from airplanes and MacArthur Boulevard. We didn't say that it
21 was shielded or blocked out by.

22 MR. FINNEY: Well, let me try to understand this.
23 It's been a long time since I studied logarithms. You said that
24 you had a source of noise of 73 decibels here, and from traffic
25 and 73 from children, then that increase was about 3 decibels.

1 Is that correct?

2 MR. HARVEY: No, I didn't say that.

3 MR. FINNEY: All right.

4 MR. HARVEY: I said, if you took two identical
5 noise sources, two identical ones. Traffic is different, as you
6 know, then the sound of a child. But if you had two identical
7 noise sources, and played them simultaneously, or had them occur
8 simultaneously, you'd get an increase of three.

9 MR. FINNEY: So you cannot put together the noise
10 of the children, and the noise of the street and reach any
11 conclusion as to how much of an increase?

12 MR. HARVEY: I just don't think that they occur at
13 the same time. The loud, you're talking about maximum noise
14 levels and the maximums don't tend to occur at the same time.
15 But, if they did happen to occur at the same time, and they were
16 similar sounds and they were in the same location, you'd get an
17 increase of three.

18 The other thing you have to remember, is they have
19 to be in the same location.

20 MR. FINNEY: So you're not getting steady noise
21 from MacArthur Boulevard?

22 MR. HARVEY: No, we're not.

23 MR. FINNEY: Now --

24 MR. HARVEY: Just as we are not getting steady
25 noise from the children.

1 MR. FINNEY: I guess one reason I'm confused is
2 that in summarizing your test program, this is badly stated that
3 one could not hear the student voices over the background noise
4 of MacArthur Boulevard traffic.

5 Now, if that be true, then, explain to me, how is
6 it, when I try to do not logarithmic experiments, but practical
7 experiments, I went and knelt in the middle of MacArthur
8 Boulevard, right in the kind of noise that you have down there.

9 And my wife came out on the front porch, and she
10 said, John, lunch is ready. Now, if Mrs. Bradley is correct, I
11 shouldn't have been able to hear my wife calling me for lunch.
12 Isn't that correct?

13 MR. HARVEY: I'm sorry, I don't understand what
14 you're saying.

15 MR. FINNEY: Well, Mrs. Bradley said that all that
16 background noise on MacArthur Boulevard sort of overwhelmed the
17 students voices, so you wouldn't hear the student voices, all
18 you'd hear was MacArthur Boulevard traffic.

19 MR. HARVEY: Okay. I can't really speak to her
20 testimony. I thought this was about my testimony.

21 MR. FINNEY: Well. That's what he testified, I
22 think. That's the notes I took. The noise of MacArthur
23 Boulevard is going to be heard by the people who live in the
24 vicinity. Is that correct?

25 MR. HARVEY: That's correct.

1 MR. FINNEY: And the noise from the children on the
2 playground or in the lawn is not going to be heard by the
3 residents nearby?

4 MR. HARVEY: No, I didn't say that.

5 MR. FINNEY: It is going to be heard.

6 MR. HARVEY: It will be heard. It can be heard on
7 adjacent properties. It just won't be any louder than the current
8 noise level from MacArthur Boulevard or the airport. It won't be
9 any louder, the volume level.

10 MR. FINNEY: It will be of a different kind of
11 noise.

12 MR. HARVEY: It would be of a different kind of
13 noise.

14 MR. FINNEY: That's right.

15 MR. HARVEY: You can tell the difference when a
16 child talks or screams from a truck passing by. That's a
17 different noise. But the volume of the noise or the decibel
18 reading of the noise will be the same.

19 MR. FINNEY: So the noise from the children will be
20 a factor for the nearby residents?

21 MR. HARVEY: I don't think it will be any louder.
22 I don't think --

23 MR. FINNEY: No, it's just, it will be a factor.

24 MR. HARVEY: Will you be able to hear it? Yes,
25 you'll be able to hear it.

1 MR. FINNEY: You'll be able to hear it. So noise
2 is a consideration here.

3 MR. HARVEY: I think it is.

4 MR. FINNEY: Of the children?

5 MR. HARVEY: I think it is.

6 MR. FINNEY: Thank you.

7 MR. HARVEY: It seems to be a consideration for
8 everyone, and I'm trying to present it in a reasonable way to say
9 it's not any higher or, than any existing noise level that's
10 already there.

11 MR. FINNEY: But it is noise that you will hear,
12 and it is different then what you hear from the street --

13 MR. HARVEY: That's true.

14 MR. FINNEY: And what you hear overhead.

15 MR. HARVEY: That's true.

16 MR. FINNEY: And you said, from your own
17 experience, you get used to the street noise, don't you? You
18 live with.

19 MR. HARVEY: Yes.

20 MR. FINNEY: Now, but your introducing now a
21 different kind of noise aren't you?

22 MR. HARVEY: That, I think, most people will get
23 used to, if they hear it all.

24 MR. FINNEY: Depends, I suspect, upon one's age.
25 But, I need that. You state, stated that Saint Patrick's has

1 taken significant measures to shield and limit noise exposure.

2 What are these measures?

3 MR. HARVEY: A good bit of it is planning on when
4 the children are outside. The way that they are bringing the
5 children to the front of the building and releasing them on the
6 corner, so that they go in, straight into the building on the
7 very corner, eliminating exposure to the surrounding.

8 The limitation on how often the children are
9 outside. There's a 20 minute time limit of groups 15 to 10. And
10 they've also put out as an option, and don't know if it's been
11 decided on yet or not, to have a noise fence along the property,
12 on the far property.

13 MR. FINNEY: You're a sound engineer, aren't you?

14 MR. HARVEY: Yes.

15 MR. FINNEY: What kind of fence do you have to
16 build to mute sound?

17 MR. HARVEY: Well, it has to be solid. It has to
18 be, in this case in can be made out of wood. Nominally one inch
19 thick boards with no gaps or openings, and it must be built into
20 the ground.

21 In this case it would be, it would need to be about
22 six feet tall.

23 MR. FINNEY: Six feet tall? Is that kind of fence,
24 or structure the kind that would let light and air into the house
25 next door?

1 MR. HARVEY: Based on the location that they've
2 shown, it's set back enough from the property line, that it would
3 let light and air into the adjacent property.

4 MR. FINNEY: How far back is it from the property
5 line?

6 MR. HARVEY: It's about ten feet, I believe. It's
7 shown on this plan. I could point to it.

8 MR. FINNEY: If you come back ten feet, aren't you
9 taking away, well, this is not your area of expertise. I'm just
10 wondering whether you aren't taking away parking places.

11 MR. HARVEY: I will say that the fence was put up,
12 they did ask if there was a way to reduce it, and I said well you
13 could put up a fence, but it wasn't a recommendation, that it was
14 really not necessary, from my point, because of reasons we've
15 already talked about.

16 MR. FINNEY: And then if you want to reduce the
17 noise to the house on the eastern side, you said that house would
18 hear noise from the children, earlier --

19 MR. HARVEY: Well yeah, but you --

20 MR. FINNEY: How would you blank out that noised?

21 MR. HARVEY: Well, we didn't really, we really,
22 there showing a fence there too. There's an existing fence there
23 already.

24 MR. FINNEY: Would that be back ten feet from the
25 property line?

1 MR. HARVEY: Well, there's an existing fence there
2 already.

3 MR. FINNEY: But it doesn't block noise, does it?

4 MR. HARVEY: It blocks some noise.

5 MR. FINNEY: Some, but --

6 MR. HARVEY: Also, they have the distance of the
7 parking lot. One method of noise control is to increase your
8 distance, and they've got a significant distance to the parking
9 lot from the other property. So their impact is not as, you
10 know.

11 The noise level you would hear, is not as high as
12 it would be on the adjacent property.

13 MR. FINNEY: Well, isn't it --

14 MR. HARVEY: The other issue is, remember that the
15 human voice is exempt from the noise code, so they're not bound
16 to do this, by a, from a noise code standpoint.

17 MR. FINNEY: Noise is noise, isn't it?

18 CHAIRPERSON GRIFFIS: I think he's established that
19 there are different noises.

20 MR. FINNEY: I agreed to that earlier sir.

21 CHAIRPERSON GRIFFIS: Indeed. Okay. Next
22 question?

23 MR. FINNEY: I think I have one final question.

24 CHAIRPERSON GRIFFIS: Good.

25 MR. FINNEY: To sum up your testimony, you are

1 acknowledging that the noise of the children is going to heard in
2 adjacent houses. Is that correct?

3 MR. HARVEY: I believe that the noise would be
4 heard in the yards of adjacent houses. In the rooms of adjacent
5 houses that overlook the property. I think on the far side of
6 the house, you wouldn't hear it if your windows are closed.

7 MR. FINNEY: No, when the wife is preparing or the
8 husband is preparing food in the kitchen, their going to hear it?

9 MR. HARVEY: That's a possibility.

10 MR. FINNEY: Thank you.

11 CHAIRPERSON GRIFFIS: Neighbors United?

12 MS. VANSICKLE: Yes, good afternoon Mr. Chairman,
13 my name is Tina VanSickle, asking questions of the Polysonics's
14 witness. Turning to your supplemental submission, dated May 3rd
15 when you had up to 17 students on the property, how did you
16 determine that an eight minute sample was representative for each
17 session?

18 MR. HARVEY: Well, we actually measured for an
19 hour. We presented an eighth minute session, because that was
20 representative. It was the same thing again and again and again.

21 Actually, we presented some of the highest noise
22 levels we read for the children, which may be a little worst
23 case, but we like to work in worst cases.

24 MS. VANSICKLE: Thank you, and do I understand
25 correctly, that you did use two instruments for each of the eight

1 minute sessions.

2 MR. HARVEY: Again, they were one hour sessions,
3 and there were two instruments. That's correct.

4 MS. VANSICKLE: And you did combine the data when
5 we go the decibel levels, in your chart it shows a series of
6 graphs that are for ambient and then with kids. How did you get
7 that data from the two instruments?

8 MR. HARVEY: That's not, when you say combine the
9 data, I don't understand what you mean.

10 MS. VANSICKLE: Well, did you use two instruments
11 to collect each one of these pieces of data? Or how did you, how
12 did you get these decibel readings and graph them?

13 MR. HARVEY: The instrument logs noise levels and
14 stores it digitally inside the instrument for the time period
15 that you're measuring, and it measures all of the noise levels,
16 whether it's a car, truck or a plane or a child.

17 And we take that instrument, that one instrument
18 back, download it to a computer, and we can print out the graph
19 that you're seeing. That is the information from the measurement
20 taken closest to MacArthur Boulevard.

21 Both of those graphs, they are not a combined of
22 the two.

23 MS. VANSICKLE: This is only based on one
24 instrument?

25 MR. HARVEY: That's one instrument, that's the

1 worst instrument. Those are the loudest noise levels you'd
2 measure. We determined that on the back side it was quieter, the
3 noise level was lower from the children, and this was worst case,
4 so we like to present the worse case.

5 MS. VANSICKLE: Okay, so, to clarify, this is
6 basically the data from one instrument that represents the taking
7 of the data along the property line, the southern property line
8 at some distance from MacArthur Boulevard.

9 MR. HARVEY: That's correct.

10 MS. VANSICKLE: Okay. Thank you. Let me ask a
11 little bit about the interpretation of these charts.

12 You have the two charts that are ambient and then
13 the ones with the students. And it looks like there are relative
14 peaks and valleys in these charts that you have a peak of about
15 70 to 75 decibels at certain intervals and then it seems to go
16 down to 55 to 60, is that correct?

17 MR. HARVEY: That's correct.

18 MS. VANSICKLE: And would the person listening
19 outside, would he experience relative periods of quiet at the 55
20 to 60 decibel level? What's the human experience of sound?

21 MR. HARVEY: That's correct. I mean, you hear,
22 imagine a truck pass by, you're on MacArthur Boulevard, and
23 there's no traffic at that point. The noise level goes up and
24 then it goes back down, and if you're in your house, you might
25 hear it hit it's peak to be quieter, you'd hear it hit a maximum

1 and then pass by.

2 MS. VANSICKLE: Okay, and it looks like that in
3 this eight minute sample, you've got maybe five minutes where the
4 decibel levels are about 55 to 60. If these intervals on the
5 bottom of the chart are basically minute by minute intervals --

6 MR. HARVEY: Yes, that's correct.

7 MS. VANSICKLE: And they're divided into quarter
8 minute sections.

9 MR. HARVEY: That's correct. Actually, they're one
10 second sections.

11 MS. VANSICKLE: I was looking at the 13.18 to
12 13.19, is that, isn't that a one minute interval?

13 MR. HARVEY: That's a one minute interval, but we
14 were actually sampling every second. It would confuse the graph
15 if we printed out every second at the bottom.

16 MS. VANSICKLE: Right, but the graph actually
17 represents every second because it's a continuous line.

18 MR. HARVEY: That's right.

19 MS. VANSICKLE: Okay. Great. Thanks. And
20 according to your report in your earlier testimony, any increase
21 of five decibels or more is clearly perceptible?

22 MR. HARVEY: That's correct.

23 MS. VANSICKLE: How many jets are in the sample
24 with kids?

25 MR. HARVEY: I don't know. I would have to count

1 them. We noted, I've got, do I count a helicopter as a jet?

2 MS. VANSICKLE: I don't think so.

3 MR. HARVEY: Okay, I've got --

4 MS. VANSICKLE: I actually only see one.

5 MR. HARVEY: I've got one jet.

6 MS. VANSICKLE: One jet?

7 MR. HARVEY: Yes.

8 MS. VANSICKLE: And did you say --

9 MR. HARVEY: I've got one jet, I've got one, two,
10 three, four trucks. I've got a helicopter. We also counted,
11 I've got one peak here that I don't have any information on,
12 because I didn't have a record of what it was, but we were
13 counting jet fly overs every two minutes during the survey.

14 MS. VANSICKLE: But that's not what's in that
15 graph.

16 MR. HARVEY: Your right, but if you average them
17 out, you get about every two minutes, if you measured for an
18 hour.

19 MS. VANSICKLE: Okay. So basically what we've got
20 is, looking at the ambient chart, there are about seven noise
21 peaks associate with jets and trucks of about 68 to 75 decibels
22 in your sample period. Is that right?

23 MR. HARVEY: That's right. I think we said 73 in
24 the report, but --

25 MS. VANSICKLE: Well, looking at the decibel levels

1 that you have in your ambient, and looking at the decibel levels
2 that you've got with the kids, and thinking about the fact that
3 the five decibel level creates a discernable difference, wouldn't
4 you then be hearing the kids in that second sample, with more
5 significance than ambient background?

6 MR. HARVEY: Why would I do that?

7 MS. VANSICKLE: Because you have no jets, and the
8 kids are the largest noise contributor in that second sample, and
9 there is more than a five decibel difference between the peaks
10 and the background noise.

11 MR. HARVEY: I think it's wrong to look at it from
12 the stand point of the background noise. You have to look at the
13 maximum value of each event. We're talking about events here.

14 A kid makes a noise and it goes away. A jet makes
15 a noise and it goes away. We consider that maximum noise level.
16 Those are the ones we've considered, and those are the ones
17 we've presented.

18 MS. VANSICKLE: But that's what I'm saying, that
19 though you have all those peaks, with those kids that are over 70
20 and you don't have any jets there, so we're going to be hearing
21 those kids instead of the jets, right?

22 MR. HARVEY: Yes. If your saying that, that's
23 true. You can hear the kids.

24 MS. VANSICKLE: You can hear the kids?

25 MR. HARVEY: Yes.

1 MS. VANSICKLE: So we don't even have to worry
2 about whether it's a different kind of noise that you discussed
3 with Mr. Finney because basically it's a five decibel difference.

4 MR. HARVEY: I'm sorry, I don't understand your
5 question.

6 MS. VANSICKLE: If there is a, if it, to get a
7 recognizable pattern, that's discernable, it takes a five decibel
8 difference, and we've established that you've got five decibel
9 difference between the peaks from the children, and your
10 background noise, I'm asking, again, we will definitely hear
11 those, and is that right?

12 MR. HARVEY: That's right.

13 MS. VANSICKLE: Okay.

14 MR. HARVEY: We, I think it'd make it clear, we
15 never said that on adjacent properties you wouldn't hear the
16 kids.

17 MS. VANSICKLE: Okay. Thank you.

18 CHAIRPERSON GRIFFIS: I think that's been
19 established.

20 MS. VANSICKLE: Great. Okay. Thank you. Let's
21 talk about the fact that these children are as ostensibly going
22 to be out for a limited period of time. Did you happen to hear
23 Mr. Barret in his testimony on May 21st?

24 MR. HARVEY: I heard, I was paying attention to
25 most of that testimony, yes.

1 MS. VANSICKLE: Did you hear that the students
2 would take morning and afternoon breaks outside, as well as
3 lunch?

4 MR. HARVEY: I understand it's lunch breaks and
5 afternoon breaks.

6 MS. VANSICKLE: No morning breaks?

7 MS. PRINCE: That's an inappropriate question for
8 this witness. If you had that question, you should have asked it
9 to Mr. Barret.

10 MS. VANSICKLE: But we actually did, it is in the
11 record, but I'm trying to ascertain why the Polysonic's witness
12 only says there's two hours outside where we will be exposed to
13 noise versus what is clearly a greater amount of noise.

14 Well, let me ask this differently then. How did
15 actually get your two hours? What was the computation you used
16 for the two hours?

17 MR. HARVEY: It wasn't a computation. I was told
18 that by Allison Prince in regard to what the, how often the kids
19 were outside.

20 MS. VANSICKLE: That was a given. Ms. Prince,
21 could you provide for the record how you actually got two hours?

22 CHAIRPERSON GRIFFIS: Let me get some
23 clarification. Two hours your talking about, is for the two hour
24 sampling?

25 MS. VANSICKLE: The Polysonic report stated that

1 the exposure would be limited and that it would be at most a two
2 hour period. I am asking the witness how he got the two hours,
3 and he does not know because he got it from Ms. Prince.

4 CHAIRPERSON GRIFFIS: Right. That's what I heard
5 too. I think it goes more towards programming. I think you
6 bring up an interesting issue. I don't think it's valuable to
7 investigate the sound person. Clearly it's an issue and the Board
8 will take note of that.

9 In terms of how much time sound, I have also heard
10 today, and in the testimony that in terms of mitigating sound,
11 there was the limited scope of outside time. So we'll get to the
12 bottom of how much time and when that happens.

13 MS. VANSICKLE: How did you arrive at the
14 conclusion that loading and unloading and going into the school
15 will give little exposure?

16 MR. HARVEY: Because the children are on the bus,
17 and they're being put out the bus, or they're unloading the bus
18 at the sidewalk level. And you can see on the pictures where
19 they would be out unloading.

20 There's about a five and half foot retaining wall
21 at the sidewalk level. That's above most middle school
22 children's heads. And then they would walk up a short path to
23 the inlet of the house on the Ashberry, is it Ashberry, Ashby
24 Street side, and into the building.

25 That's minimal impact as far as I'm concerned.

1 MS. VANSICKLE: And how long is the path?

2 MR. HARVEY: I would say it's 50 feet.

3 MS. VANSICKLE: And that's short?

4 MR. HARVEY: The time it takes is, for a child to
5 walk 50 feet is short.

6 MS. VANSICKLE: But, it would not be, there is no
7 wall that is going to restrain the children's noises at the level
8 of the sidewalk that is about 60 feet.

9 MR. HARVEY: We're talking about people walking on
10 a sidewalk, and talking as they go into a building. I think
11 that's minimal exposure.

12 MS. VANSICKLE: Thank you. Mr. Harvey, you noted
13 in your oral testimony that you worked on a project that involved
14 screams on a roller coaster.

15 MR. HARVEY: Yes;

16 MS. VANSICKLE: What is a decibel level of such a
17 scream measured at a distance of two feet, ten feet, and twenty
18 feet?

19 MR. HARVEY: Boy, that's why we measure. I'll say
20 that.

21 CHAIRPERSON GRIFFIS: Can you answer that, or no?

22 MR. HARVEY: You know, we've measured screams at
23 two feet of 90 decibels, easy.

24 MS. VANSICKLE: And what is it at 20 feet.

25 MR. HARVEY: A little something less than two.

1 MS. VANSICKLE: Is the 90, is the 90 decibels at
2 two feet?

3 MR. HARVEY: The 90 decibels at two feet, yes.

4 MS. VANSICKLE: Okay, and so what is it at 20.
5 There's some --

6 MR. HARVEY: Twenty, there's some --

7 MS. VANSICKLE: The function of distance.

8 MR. HARVEY: Four doublings, it's about four
9 doublings times six. That's 24 decibels down.

10 CHAIRPERSON GRIFFIS: How do you spell that? Okay.
11 Convince us to how that relates to what we're doing.

12 MS. VANSICKLE: Yes. I'm trying to --

13 MR. HARVEY: So, that's 60 to 65.

14 MS. VANSICKLE: The point here is that these
15 children are going to be coming within ten feet, even with a
16 fence.

17 CHAIRPERSON GRIFFIS: Okay, in two cross
18 examinations somehow you need to link, otherwise you're going to
19 need to move on. The sound of screams on a roller coaster is
20 analogous to children, you are at walking up to the building or
21 playing on the building.

22 So, if you want to ask a question that relates us
23 to that, that would be grand.

24 MS. VANSICKLE: On the grassy area, if the children
25 are speaking, screaming at 90 decibels, what will be the impact

1 on the side yard? That's my question.

2 MR. HARVEY: Maybe it's fair to say, you have to
3 take a kid to a roller coaster to get him to scream at 90
4 decibels. It's, I think it's, you know, we let the kids out on
5 the yard there, and they played some touch football, and there
6 was some screaming.

7 We measured nothing that equalled 90 decibels. I
8 think that's the evidence I'd like to stick to.

9 MS. VANSICKLE: Thank you.

10 MR. HARVEY: The kids on a roller coaster are
11 screaming continuously, because that's, that's the nature of a
12 roller coaster, and we don't have a roller coaster on this site.

13 MS. VANSICKLE: Let me just pursue the noise of
14 this question. You said on page one of the Polysonic report
15 dated May 3rd 2002, that the children's noise will not be heard
16 in a house with closed windows?

17 MR. HARVEY: Houses at a distance. We said that,
18 houses which directly above the property, with closed windows,
19 would hear, but beyond that point, we don't think people with
20 closed windows in their houses will hear the noise.

21 MS. VANSICKLE: So, does that mean that in order to
22 get peace and quiet in our neighborhood we have to stay in our
23 houses with closed windows?

24 MR. HARVEY: No, that's not true at all. We're not
25 talking about peace and quiet here. We're talking about being

1 able to perceive a, the noise of a child talking or screaming on
2 a property.

3 MS. VANSICKLE: And the screaming is at how many
4 decibels?

5 MR. HARVEY: We measured 73.

6 MS. VANSICKLE: Was 73 at two feet?

7 MR. HARVEY: At 15 feet.

8 MS. VANSICKLE: At 15 feet. So what was it at two
9 feet?

10 MR. HARVEY: We didn't measure at, the kids didn't
11 get that close to the instrument.

12 MS. VANSICKLE: I suggest that it's going to be a
13 lot more than 73 decibels when you could measure it at two feet,
14 and therefore it represents a significant impact.

15 MS. PRINCE: I object to this testimony.

16 MS. VANSICKLE: Thank you very much.

17 MR. HARVEY: Let me just address that. I don't
18 think any neighbor's going to be within two feet of a kid.

19 CHAIRPERSON GRIFFIS: Okay. Next question. I'm
20 learning a lot about sound on this. I see that, it's
21 fascinating.

22 MR. SKRIVSETH: I'm Lawrence Skrivseth of 4913
23 MacArthur Boulevard, the property just south of the subject
24 property. Mr. Harvey, welcome, the, unfortunately I wasn't home
25 on the day of your field test.

1 MR. HARVEY: Yeah, we were disappointed.

2 MR. SKRIVSETH: Although, another contiguous
3 neighbor, Sharon Hoy, who is, has the unusual opportunity to be
4 here today because she's a Senior Executive at the Defense
5 Department, and is rather busy.

6 She was home, and she did hear the children, but
7 the, and her reflections are incorporated in my questions.

8 CHAIRPERSON GRIFFIS: Good. Then, let's jump into
9 them. We have, right now, 30 minutes left for us all to get home
10 within a reasonable hour. So, if we can, consolidate, I will
11 give direction, if we're being redundant on questions and I'd ask
12 that answers be succinct and direct and questions also.

13 MR. SKRIVSETH: Please, please do, I have been
14 striking them out as we go along.

15 CHAIRPERSON GRIFFIS: Fabulous.

16 MR. SKRIVSETH: Had I been at my home on the day of
17 the tests, I might have asked that you put your, what's it
18 called, a sound meter, in the, along the parking lot edge,
19 because, while I am concerned by noise in the front yard, it is
20 primarily from the back porch, in the spring and fall, that I
21 would be seated.

22 Well, that's unfortunate that we were unable to do
23 that.

24 CHAIRPERSON GRIFFIS: Now we need to absolutely
25 stick to questions.

1 MR. SKRIVSETH: Yes. First, I have a question of
2 clarification. I hope the Board does not think I'm being
3 nitpicking here, but if you would look, sir, at page three, of
4 your report of May 3rd.

5 In the paragraph that just before comments, the
6 next to last sentence, it says, notice that the lower level
7 noises during this time are slightly higher than low level noise
8 during the ambient measurement.

9 Did you intend to put a hyphen between lower and
10 level, the fourth and fifth words of that sentence? I don't wish
11 the overworked reader to accidentally get the idea that you're
12 talking about a noise level that is lower, but rather, it's the
13 noises which are at a lower level.

14 You're talking about the volume being lower. Not
15 that they are lower than in an a different test.

16 CHAIRPERSON GRIFFIS: Is the question clear?

17 MR. HARVEY: No. I'm sorry. Your question, let me
18 hear it again.

19 MR. SKRIVSETH: All right, let me try to restate it
20 much simpler.

21 CHAIRPERSON GRIFFIS: Actually, no, it may be
22 clear, why don't you just explain the sentence. Do you have it
23 in front of you?

24 MR. HARVEY: Yes.

25 CHAIRPERSON GRIFFIS: Give us the meaning.

1 MR. HARVEY: The lower level noises during this
2 time were slightly higher than the low level noises during the
3 ambient measurement. If you look at the minimum values measured
4 while the kids were there, it was slightly higher than the
5 minimum values measured when the kids weren't there.

6 And we attributed this to traffic of mainly cars.
7 We didn't deal with cars much, but cars were on MacArthur during
8 the noon hour and just after the noon hour. The traffic on
9 MacArthur picks up with cars pretty heavy during the noon, so
10 that's what we explain that with.

11 MR. SKRIVSETH: All right. Thank you. In your
12 Executive Summary, your next to last bullet reads, the average
13 noise level on any property will not be increased by the presence
14 of the school noise.

15 How is, I hate to sound like a perfect laymen, but
16 that's what I am. How is this mathematically possible? Isn't
17 sound additive, even if it is logarithmic.

18 MR. HARVEY: Yeah, it is additive, even if it is
19 logarithmic, but we're talking about again, it's a matter of
20 averaged over time. And given the time impact and the fact that
21 the noise level isn't any higher with the kids than without the
22 kids, the overall average will not change.

23 On a minuscule basis, maybe, but an imperceptible
24 basis. It would not be a perceptible change. It may not even be
25 a measurable change, if I think about it hard enough, because

1 it's so small.

2 MR. SKRIVSETH: Okay. Your testimony and report
3 indicate that an increase of three db effectively doubles the
4 sound volume. Is that right? That's what I noted, I think --

5 MR. HARVEY: No, the three db is barely
6 perceptible, and tend to be as a doubling of self.

7 MR. SKRIVSETH: All right. Thank you. That means
8 I have fewer questions to ask you. Are you assuming that all the
9 neighbors use, have closed windows? I'm sorry that one's been
10 covered.

11 I do wish to, in so far as you and your report and
12 your testimony have reiterated, if your windows are closed, I
13 feel it's probably fair that I can say that they usually are not
14 in the spring and fall.

15 Your report focuses on the highest level of noise.
16 Can we look for a second at the lowest level? If you look at
17 the graphs that you provided at the end of the report on May 3rd,
18 can you tell me what the average sound level was, more or less,
19 during the quiet periods, on the two tests?

20 Say first without the children present, and then
21 with the children present?

22 MR. HARVEY: Yes. That's what I what I was saying
23 earlier was this lower noise level, the minimum noise level's
24 measured. It varied around, you know, it's between 55 and 60,
25 without the children, and it's between, it varies quite a bit,

1 60, well, there's 55, there's actually 51, up to about 65, in
2 some locations.

3 MR. SKRIVSETH: All right.

4 MR. HARVEY: And again, we attributed that
5 difference, not to children, but to traffic because of the higher
6 level of cars on the roadway at the time.

7 MR. SKRIVSETH: All right, now, are you certain
8 that's the case, or is that an assumption?

9 MR. HARVEY: That was my conclusion.

10 MR. SKRIVSETH: All right. You noted that 65 db is
11 the normal human voice at two feet. Is that correct?

12 MR. HARVEY: That's correct.

13 MR. SKRIVSETH: This level was exceeded 17 times
14 when the children were present, during the period that's graphed,
15 and only seven when they were not. Is this equivalent to saying,
16 that I'll have someone talking in my ear 17 times while I'm
17 trying to read the paper on my back porch?

18 MR. HARVEY: Well, you're not going to be three
19 feet from them. Again, we have to consider the distance. Don't
20 forget distance here, and everything is further away from these
21 children than this is.

22 So, no it won't be like that.

23 MR. SKRIVSETH: All right. Now, in that my porch
24 is forty inches from the property line, it's not that far,
25 farther away.

1 MR. HARVEY: But, we're not going to have children
2 on your property line, I don't think. There's a set back
3 distance that's planned. There's also an eight foot, or I don't
4 know, six foot retaining wall at your property line that's going
5 to have to hold the kids back anyway. So, you're not going to
6 get that close.

7 MR. SKRIVSETH: Was the air conditioner compressor
8 in operation when you were conducting your test?

9 MR. HARVEY: We did note noise, from your air
10 conditioner?

11 MR. SKRIVSETH: No, mine wasn't running that day, I
12 can, for sure, no one was home.

13 MR. HARVEY: The field notes don't reflect anything
14 from an air conditioning.

15 MR. SKRIVSETH: You noted that the fence that's
16 depicted on the architects surrendering is a solid fence, one
17 inch thick, no gaps or openings. Are you aware that the Office
18 of Planning recommends against a solid fence because of air
19 circulation issues?

20 CHAIRPERSON GRIFFIS: I think he's also testified
21 his opinion on it too, so we can get to Office of Planning also.

22 MR. SKRIVSETH: I have but one more question area.
23 The distance of the parking lot, you described earlier as
24 constituting a sort of a buffer towards the Hoy's residence.

25 It cannot, however, be a buffer from the noise of

1 the parking lot itself, starting motors in vehicles, opening and
2 closing doors, conversations between people on their way to and
3 from their vehicles, and so forth.

4 Is there any, was there any monitoring of parking
5 lot noise that would be reflective of actual perspective
6 conditions?

7 MR. HARVEY: Not directly. There is existing
8 parking there. They are currently parking there and that was the
9 future intended use. You know, we were looking at changes at the
10 issues.

11 MR. SKRIVSETH: Do you recall whether any vehicles
12 arrived or left while you were there, to conducting your tests?

13 MR. HARVEY: No.

14 MR. SKRIVSETH: All right. Thank you very much.

15 MR. LOVENDUSKY: Michael Lovendusky, party
16 opponent. Good afternoon Mr. Harvey. Did you consider the noise
17 level test of up to 17 cars arriving and departing from the
18 traffic lot at the time of your tests?

19 CHAIRPERSON GRIFFIS: I think we just got an answer
20 on that. Do you have further?

21 MR. HARVEY: I just wanted, I want to comment on
22 the cars. Since the cars have come up. I think it's important
23 to realize that the car arrival and departure is very limited to
24 weekdays.

25 It's not there at all during the weekends. It's

1 not there at all during the summer. It's not there at all during
2 the evenings.

3 CHAIRPERSON GRIFFIS: Okay, but the direct answer
4 to the question is you didn't measure any sort of vehicles
5 utilizing the surface parking in that area.

6 MR. HARVEY: No.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. LOVENDUSKY: Sir, in both your testimonies
9 today, as well as your direct testimony, you rendered some
10 remarkably direct opinions about the, about the impact of noise,
11 human noise, breaking the laws of the District of Columbia.

12 Are you qualified to render such an opinion?

13 MR. HARVEY: Breaking the laws of the District of
14 Columbia?

15 CHAIRPERSON GRIFFIS: I think it was to your
16 comment on the sound noise. Right, the noise code, which is part
17 of the laws. Are you familiar enough to make that statement?

18 MR. HARVEY: I've read the code and it states that
19 the human voice is exempt from the code.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. LOVENDUSKY: Have you read the District of
22 Columbia Municipal Regulations at 2800.2?

23 MR. HARVEY: I may have. I don't know by the
24 number.

25 MR. LOVENDUSKY: Are you familiar with the

1 regulation that provides that it shall be unlawful for any person
2 to make any noise disturbance by unamplified voice on private
3 property of public space?

4 CHAIRPERSON GRIFFIS: What title are you citing
5 from?

6 MR. LOVENDUSKY: The District of Columbia Municipal
7 Regulations, section 2800.2.

8 CHAIRPERSON GRIFFIS: It doesn't have a title?

9 MR. LOVENDUSKY: The title, Maximum Noise Levels.

10 CHAIRPERSON GRIFFIS: Is there a number on the --

11 MR. LOVENDUSKY: Chapter 28.

12 CHAIRPERSON GRIFFIS: Oh, 28, okay, that's very
13 nice.

14 MR. LOVENDUSKY: Title 20.

15 CHAIRPERSON GRIFFIS: Oh, Title 20. Are you
16 familiar with that?

17 MR. HARVEY: Not directly. I mean, we're looking at
18 the exemption of the human voice at, the exemption of the human
19 voice from The Noise Code.

20 MR. LOVENDUSKY: By the Noise Code, I presume you
21 are referring to Title 20, Chapter 27, Noise Control.

22 MR. HARVEY: That's correct.

23 MR. LOVENDUSKY: So you are unfamiliar with the
24 laws provided for by Title 20, Chapter 28, with regard to maximum
25 noise levels with regard to unamplified voices on private

1 property of public space.

2 MR. HARVEY: I won't say I'm unfamiliar with it.

3 MR. LOVENDUSKY: How loud is an air conditioner? A
4 residential air conditioner.

5 MR. HARVEY: How close am I to this residential air
6 conditioner?

7 MR. LOVENDUSKY: Fifteen feet.

8 CHAIRPERSON GRIFFIS: I'm sorry, for my
9 clarifications, are you talking about a condenser on the ground,
10 are talking about a window air unit?

11 MR. LOVENDUSKY: I'm talking about the two units
12 that currently exist at the 4925 MacArthur property.

13 CHAIRPERSON GRIFFIS: So, an on grade condenser,
14 can you make that?

15 MR. HARVEY: I can't, and that's why we measure and
16 I didn't measure those condensers, so I can't answer that
17 question.

18 MR. LOVENDUSKY: Are you familiar with the plans to
19 increase or change the air conditioning units at the 4925
20 MacArthur property?

21 MR. HARVEY: Only in what they were, discussed
22 today during the testimony. And my comment to that would be they
23 have to meet the Noise Code. There's a Noise Code that's
24 established that regulates that, and they will meet it.

25 I'm certain. With my experience with St.

1 Patrick's, they would meet the noise code.

2 MR. LOVENDUSKY: The noise generated by such air
3 conditioners would be in addition to the noise generated by the
4 children, presumably, is that correct?

5 MR. HARVEY: Yes.

6 MR. LOVENDUSKY: Would the noise generated by the
7 air conditioners be more constant than the occasional noise
8 generated by aircraft, vehicles, and children?

9 MR. HARVEY: It would be more constant. It may
10 not, it would probably not be as loud. It certainly wouldn't be
11 as loud as an aircraft flying over.

12 MR. LOVENDUSKY: The information that you've
13 provided with regard to aircraft flights have been averaged. Is
14 that correct?

15 MR. HARVEY: The sound data? Averaged sound data?
16 Or averaged number of flights?

17 MR. LOVENDUSKY: I'm asking that, yes, is it
18 averaged sound data?

19 MR. HARVEY: It's not average sound data. We
20 measured the, what you see is the maximum value measured during a
21 fly over.

22 MR. LOVENDUSKY: And with regard to vehicular
23 traffic, is your sound data averaged sound data, or is it reflect
24 actual sound data?

25 MR. HARVEY: It's the same. It's the maximum value

1 of the sound.

2 MR. LOVENDUSKY: When you conducted your surveys,
3 did the children remain quiet when the aircraft flew over?

4 MR. HARVEY: I'll say no, because they were just
5 playing, and aircrafts were flying over. They didn't stop and
6 wait.

7 MR. LOVENDUSKY: Did the children get louder when
8 the aircraft flew over?

9 MR. HARVEY: I don't think so.

10 MR. LOVENDUSKY: When there is neither aircraft
11 noise, nor vehicular noise, is it quiet?

12 MR. HARVEY: What's quiet? I have to ask that
13 question. What do you mean by quiet?

14 MR. LOVENDUSKY: Well, you're the expert, what is
15 quiet?

16 MR. HARVEY: I don't think we're testifying about
17 what is quiet. I think we're testifying about the impact of
18 children on the adjacent properties. I mean, quiet is a very
19 broad term, I don't think we want, I can't answer that directly.

20 CHAIRPERSON GRIFFIS: Is there a level at which you
21 classify for your own engineering purposes, quiet?

22 MR. HARVEY: We stay away from the word quiet.

23 CHAIRPERSON GRIFFIS: Indeed. No, that's where I'm
24 going to. I understand the question, and I think it's an
25 important one, but there's a difference here between an engineers

1 understanding and doing a sound study, and a resident's opinion
2 of quiet. I'm not sure that they match.

3 And that's where I'm trying to go. You don't have
4 a specific level that is officially labeled in the engineering
5 novels that is quiet. Is that correct?

6 MR. HARVEY: Certainly. If you go to a noise level
7 low enough. Everybody's going to call that quiet.

8 CHAIRPERSON GRIFFIS: But there's not a standard.

9 MR. HARVEY: There's not a standard that's set for
10 what's quiet and a decibel level attached to.

11 MR. HARVEY: Quiet is a subjective term.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. LOVENDUSKY: So what was the earliest hour that
14 you recorded the sound data?

15 MR. HARVEY: We started the survey about noon.

16 MR. LOVENDUSKY: Would the sound that you expect to
17 record at 6:30 a.m. be less than the sound you would expect to
18 record at noon?

19 MR. HARVEY: Yes.

20 MR. LOVENDUSKY: And would the sound at 7:30 and
21 8:30 and 9:30 differ from the sound you would require, expect to
22 record at noon?

23 MR. HARVEY: Yes. It's going to come up with the
24 peak, with the traffic volume and the airplanes.

25 MR. LOVENDUSKY: So, did you, the traffic expert

1 has testified about peak traffic times, both at the Ashby Street
2 location, as well as the White Haven Street location. Did you
3 record sound levels at the peak traffic times?

4 MR. HARVEY: Peak being 7:00 in the morning and
5 5:00 p.m. or --

6 MR. LOVENDUSKY: 7:45 to 8:45 a.m.

7 MR. HARVEY: No we did not.

8 CHAIRPERSON GRIFFIS: Let me just get clarification
9 on the question. Your asking him if he measures the sound level
10 of the existing condition of the traffic at peak periods, for the
11 traffic volume?

12 MR. LOVENDUSKY: Correct.

13 CHAIRPERSON GRIFFIS: Okay. And you did not?

14 MR. HARVEY: No we didn't.

15 CHAIRPERSON GRIFFIS: Okay.

16 MR. LOVENDUSKY: And then again, there will be
17 traffic sound generated at the time of the departure of the
18 students in the afternoon. I believe that time period was
19 between 3:30 and 4:30, did you measure the sound at that time?

20 MR. HARVEY: No we didn't. Again, the departure
21 time for the children, from the house to the bus is very short.
22 And they're not playing, they're walking on the sidewalk. It's
23 people walking on a sidewalk.

24 MR. LOVENDUSKY: Silently?

25 CHAIRPERSON GRIFFIS: That's one of those official

1 terms, isn't that right. Silent. Okay.

2 MR. LOVENDUSKY: Just one or two other questions
3 and then I'll finish.

4 CHAIRPERSON GRIFFIS: Very good. Just for my
5 purposes, the investigation, in my understanding, of the sound
6 study, was to measure the level of the children playing in the
7 yard. Is that correct?

8 MR. HARVEY: That's correct. That's what we felt
9 would be the only possible addition of noise to this site, would
10 be that of children playing in the yard.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. HARVEY: So we focused on that.

13 CHAIRPERSON GRIFFIS: Okay. Good clarification
14 that's come up with the cross examination questions. In terms of
15 that the traffic existing condition was not necessarily sought
16 out as a direct level to be measured.

17 Okay. Last questions?

18 MR. LOVENDUSKY: When you measured your sound, in
19 the absence of aircraft noise and vehicular noise, what was the
20 level of sound generated by the students?

21 MR. HARVEY: We stated that to be 68 to 73.

22 MR. LOVENDUSKY: Thank you. No further questions.

23 CHAIRPERSON GRIFFIS: Thank you very much. Okay,
24 let's take this opportunity if there are any Board questions of
25 the Sound expert.

1 MR. ETHERLY: Nothing for the Sound Expert, Mr.
2 Chairman, but it might be useful if Mr. Lovendusky would be able
3 to provide, I'd be interesting in getting a copy of the D.C. Code
4 cite, regarding the noise statute that you referenced during your
5 cross examination.

6 MR. LOVENDUSKY: Yes sir. That citation is Title
7 20, Chapter 28, Maximum Noise Levels, Section 2800.2.

8 CHAIRPERSON GRIFFIS: And what was the title
9 number?

10 MR. LOVENDUSKY: That was DCMR. May I read it?

11 CHAIRPERSON GRIFFIS: What I need to know, what's
12 the heading of the title for me.

13 MR. LOVENDUSKY: Chapter 28's Title is Maximum
14 Noise Levels.

15 CHAIRPERSON GRIFFIS: Right. And what's the
16 heading of the DCMR Title 20?

17 MR. LOVENDUSKY: I don't know the answer to that.
18 But I could read the provision in it's entirety,

19 CHAIRPERSON GRIFFIS: That's okay.

20 MR. ETHERLY: Thank you.

21 MR. LOVENDUSKY: Thank you Mr. Chair.

22 MR. HARVEY: And for your reference also, the one
23 that we quoted was the previous chapter, Chapter 27.

24 CHAIRPERSON GRIFFIS: Chapter 27. Okay, anything
25 else Board Members? You guys getting your third wind? You want

1 to keep going? Okay.

2 I think we're at a rational break point and it is
3 7:45 so, let us just reiterate when we meet next, what is
4 happening and then I'll take any limited questions that we have
5 just for clarification.

6 If I'm not mistaken, we will move, we, have we,
7 we've finished cross examination, except that there was a
8 potential of additional information coming in. All right, but
9 clearly, cross examination will finalize.

10 Cross examination, when we start again, we will go
11 to persons in support. No we wont.

12 MS. PRUITT: We would then go to government
13 reports.

14 CHAIRPERSON GRIFFIS: I mean government reports,
15 yeah. Why doesn't somebody else, with a clear mind, run through
16 what we're going to do next.

17 MS. PRINCE: May I simply add, I'm cross
18 examination, just so everyone's clear, Mr. Anders was here today
19 on behalf of Mr. Wells from Wells and Associates. He's available
20 for cross examination on September 10th.

21 On the additional traffic information that was
22 filed with the Board on July 5th.

23 CHAIRPERSON GRIFFIS: Oh. Indeed. Right.

24 MS. PRINCE: In addition, Mr. Barret is available
25 to be recalled on September 10th by any of the opposition

1 parties, should they so choose to hear from him, or should
2 clarification of the two hour time limit on outdoor play be
3 desired, and then we can proceed with Office of Planning.

4 CHAIRPERSON GRIFFIS: Okay, and then we'll get back
5 into the, well, we'll just follow the rest of the series of our
6 outlines. Government reports, we will then hear the cases of the
7 persons in testimonies and then we'll go to closing.

8 So, we're not anticipating any other submissions
9 for the tenth are we? Actually, we did have something hanging
10 out there, didn't we?

11 MR. SKRIVSETH: Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Yes?

13 MR. SKRIVSETH: I was going to provide some minute
14 by minute traffic flow data, which will certainly be in hand
15 before the tenth.

16 CHAIRPERSON GRIFFIS: You were?

17 MR. SKRIVSETH: Yes. This was discussed, following
18 the, my cross examination of Mr. Bucks.

19 CHAIRPERSON GRIFFIS: Good. Okay. It looks like
20 then we're complete. So, we will then resume on the tenth of
21 September?

22 MS. PRUITT: That is correct. I think, I'm sorry,
23 you may be correct, I think that only then I didn't see and it
24 may be, and it's the Board requested that ddot provide a list of
25 questions pertaining to the carpal that.

1 CHAIRPERSON GRIFFIS: Actually we got that. I have
2 reviewed that, so that's in. But good point, and that is in the
3 case file. Okay. Yes sir?

4 MR. FINNEY: One final question, earlier, Mr.
5 Chair, you said we should be here at 9:30 on September 10th.

6 CHAIRPERSON GRIFFIS: Timing.

7 MR. FINNEY: What would you suggest as an arrival
8 time?

9 CHAIRPERSON GRIFFIS: I would suggest no earlier
10 than 10:00.

11 MS. PRUITT: 1:00.

12 CHAIRPERSON GRIFFIS: As I stated, we have The
13 Washington Home, which I would anticipate taking anywhere from 60
14 to 90 minutes.

15 MS. PRUITT: This would be continuation and the
16 parking issue.

17 CHAIRPERSON GRIFFIS: That's true, and we've heard
18 the entire case, from the Applicant. We will go to the
19 government reports, the case of the --

20 MS. PRUITT: Opponents? Parties, rather.

21 CHAIRPERSON GRIFFIS: And then move on from there.
22 So I would anticipate an hour to an hour and a half.

23 MR. ETHERLY: Just as a quick question Mr. Chair --

24 CHAIRPERSON GRIFFIS: Yes.

25 MR. ETHERLY: Do we run into any concerns with

1 regard to the start of school by that time.

2 MS. PRINCE: Unfortunately, we've missed that boat.

3 I would like to note we're in our ninth hour of cross
4 examination, I'm not optimistic that we are going to complete on
5 September tenth, if The Washington Home ends up taking more time,
6 then you're estimating.

7 So I would ask, to arrange for yet another spill
8 over date. I mean I would love to finish on the tenth, I want to
9 finish on the tenth, but your estimate is far more optimistic
10 than that of counsel for The Washington Home.

11 CHAIRPERSON GRIFFIS: Oh dear.

12 MS. BAILEY: Mr. Chairman, that would put us in
13 October.

14 CHAIRPERSON GRIFFIS: Well, let's be clear, we have
15 the entire afternoon. We'll take a shortened lunch break, as we
16 always do now, and we'll have the morning session.

17 I'm not adverse to setting up a date next, and
18 everyone can clear there schedule and we can hold that, but I
19 will feel fairly strongly that we should finish on the tenth.

20 And I would, and we can all focus, everyone
21 involved, focus on doing that. But if it is of more convenient
22 then it may well be, let's just pick another date.

23 When in October, where you anticipating? What's
24 the 15th in the morning look like?

25 MS. PRUITT: The first available date that looks

1 like we could really --

2 CHAIRPERSON GRIFFIS: Oh, what about the eighth?

3 MS. PRUITT: That's what I was thinking, the
4 eighth.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. PRUITT: But, I have no clue what the, right
7 now we only have one case on there. It doesn't look like it
8 could be very bad, but I don't know. I was trying to find you a
9 morning agenda so you would be able, we would be sure to finish.

10 CHAIRPERSON GRIFFIS: Wait, we have one scheduled
11 in the afternoon on the eighth?

12 MS. PRUITT: We have one scheduled in the morning.

13 CHAIRPERSON GRIFFIS: Right. Okay. And the
14 afternoon is free.

15 MS. PRUITT: Right. So we could make that the
16 second case of the day and not schedule anything for the rest of
17 the day.

18 CHAIRPERSON GRIFFIS: That's right. And when we do
19 finish on the tenth, we get an afternoon off.

20 MS. PRUITT: Correct. Yes.

21 CHAIRPERSON GRIFFIS: So we are incentivized to do
22 that. Okay. Any other questions? Clarifications we can make at
23 this time?

24 MS. BAILEY: The continued hearing date, Mr.
25 Chairman, is September 10th and October 8th. And October 8th,

1 they will be the second case of the day.

2 CHAIRPERSON GRIFFIS: Yes. Great. Sounds good.
3 Thank you all very much. Have a very good evening. Get home
4 safely. And this would adjourn then, the ninth July 2002,
5 afternoon session.

6 (Whereupon, the foregoing matter
7 was concluded at 8:56 p.m.)

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